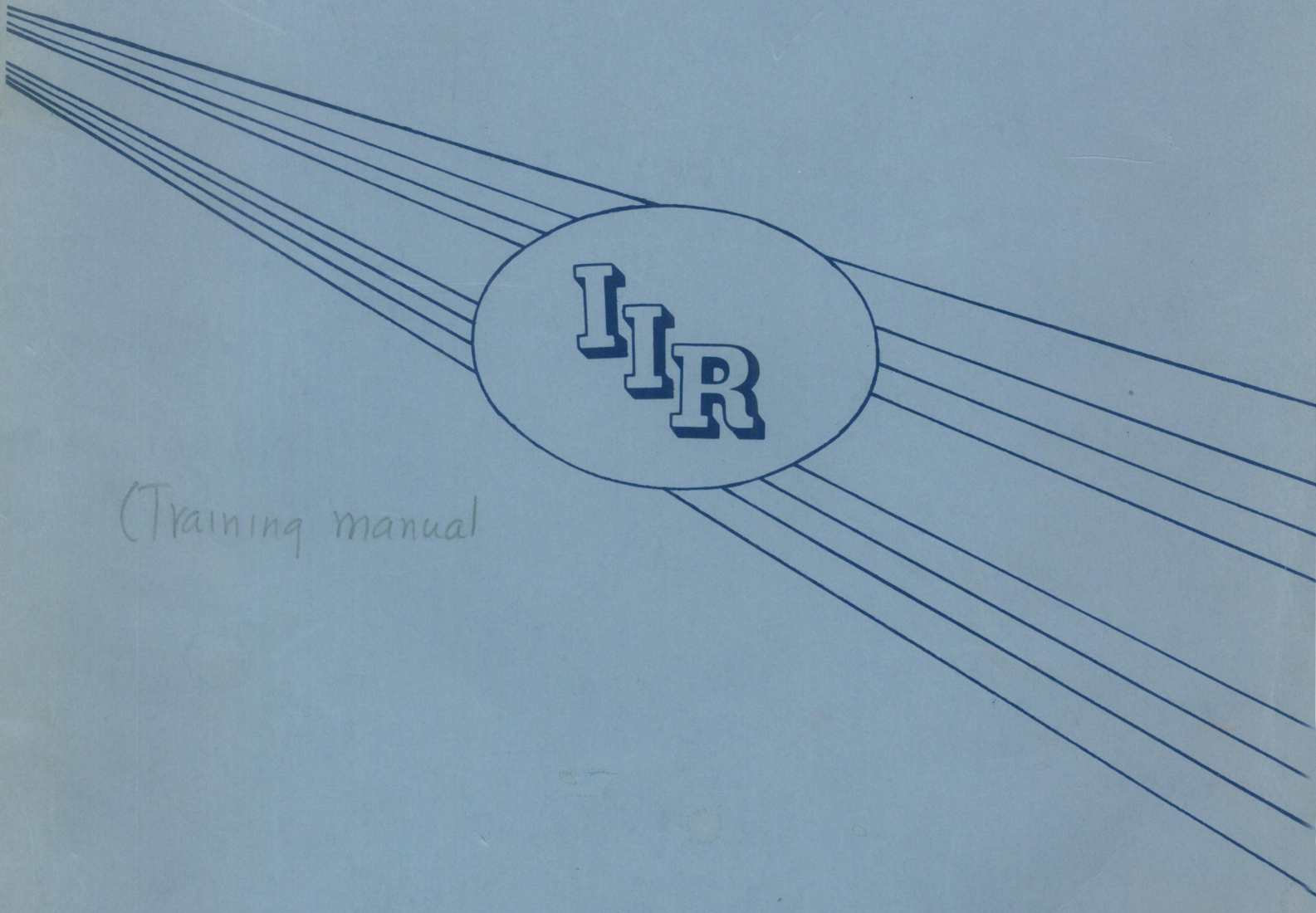
THE RODDA ACT – ONE YEAR LATER



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THE RODDA ACT -- ONE YEAR LATER

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FOREWORD

The Institute of Industrial Relations is happy to present this, the eighth 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.

The passage in 1975 of the Educational Employment Relations (Rodda) Act, which became fully effective on July 1, 1976, poses new problems to both certificated and classified school employees in the more than 1200 California public school districts, to their managers, and to the many organizations which have represented the parties under the procedures of the Winton Act and are now seeking rights of representation under the Rodda Act.

A major feature of the Rodda Act is the creation of the three-member Educational Employment Relations Board (EERB) which, among other things, is empowered to supervise representation elections and certify exclusive bargaining agents; in disputed cases, determine scope of bargaining matters and appropriate bargaining units; and rule upon allegations of unfair labor practice charges as they are defined in the statute.

Concepts such as "appropriate bargaining unit" and "community of interest" are now -- one year later -- confronting school managers, their employees, and their organizations. A host of related questions also must be dealt with that may well affect the existing relationship between the bargaining parties. For example, how will they respond to the new rules enforceable as statutory unfair labor practices? How effective will be the blend of mediation and fact-finding provided under the Rodda Act in aiding the parties to bring about mutual accommodation? What changes will come from the negotiation of written contracts and from the introduction of binding arbitration in the sensitive field of public education?

This Manual attempts to put into perspective the new relationship between the parties that results from the transition of procedures guided by the Winton Act to those set forth under the Rodda Act. It attempts to shed light on emerging case law under Rodda against the background of precedents from other areas of labor relations law. The Guide for EERB Hearings contained in the Manual, while not officially endorsed by EERB is nonetheless a practical training model, and may generally be used as a step-by-step analysis of procedures for bringing cases before the Board.

The Manual should be of particular interest to those representing employees as well as managers in public education, to teachers and students of public sector labor relations, and to practitioners involved in public education policy.

December 1976

Frederic Meyers
Director

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CALIFORNIA'S EMERGING LAW OF COLLECTIVE BARGAINING IN PUBLIC EDUCATION

- ONE YEAR LATER -

CALIFORNIA'S EMERGING LAW OF COLLECTIVE BARGAINING IN PUBLIC EDUCATION

On September 22, 1975, Senate Bill 160, authored by California State Senator Albert Rodda, was signed into law by Governor Edmund G. Brown, Jr.. Passage of S.B. 160 was the result of several years of legislative debate over changes in public education labor relations in California. Since 1965, public school employers and employees had been conducting their labor relations under the Winton Act - an Act which many derisively referred to as a "Meet and Defer" process.

For most public employees, 1975 was to be the year in which a comprehensive collective bargaining law could and would be passed. The reasons for such expectations were perhaps three-fold: Resolution 5, adopted on June 22, 1972, by the California Assembly authorizing the Speaker to appoint a five-member Assembly Advisory Council on Public Employee Relations and its subsequent report in 1973; the election in 1974 of Democratic majorities in both houses of the Legislature; and the election of a Democratic Governor who was committed to support collective bargaining for public employees.

The vehicle for making this hope a reality was S.B. 275 (Dills-Berman), but after weeks of hearings by legislative committees coupled with differences between various interest groups, S.B. 275 failed to gain passage. During this time several other bills relative to public sector bargaining were introduced, among them S.B. 160. But because the

Governor and others favored an "Omnibus" bill covering all public employees, S.B. 160 was placed in a holding pattern awaiting the outcome of S.B. 275. When it became apparent that S.B. 275 was in trouble, Senator Rodda moved his bill. After some amendments to satisfy interest groups and other changes requested by the Governor, the bill was passed.

On January 23, 1976, Governor Brown announced the names of the three-member Educational Employment Relations Board, and the first phase was in operation. The Board members selected were: Reginald H. Alleyne, Jr., Chairman, five-year term; Jerilou H. Cossack, three-year term; Ray Gonzales, one-year term. Since S.B. 160 repealed the Winton Act effective July 1, 1976, and the second phase of S.B. 160 concerning organizational rights of employees, representational rights of employee organizations, and exclusivity on recognition was to become effective on April 1, time was an important factor for the newly appointed Board. Like any state regulatory agency, EERB was faced with tremendous internal structural and procedural tasks. In addition, it was expected to be prepared for the administrative tasks mandated for April 1.

In March, public hearings were held for the purpose of receiving testimony towards establishing emergency regulations, and on March 24 those regulations were adopted.

The key points of the rules were set forth in a letter from the Board, a portion of which is quoted:

The published Rules required 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 3544.3 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. (sic) A hearing officer will hear those cases, following attempts to settle them informally.

The Board will hear cases 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."

As a rule, appointed administrative boards bring to their tasks varied backgrounds and philosophies. And when that task involves adopting uniform procedures regulating divergent interests, differences emerge. EERB and the education community proved to be no exception. The Board split over the cost and method of operation. The education community split over bargaining units and the methods to be used by the Board in resolving those resulting problems. Additionally, school employee organizations were apprehensive about meeting the recognition requirements for bargaining units prior to the end of the school year. Finally, there was the question of resolving unfair practices occurring between the April 1 date under Rodda and the July 1 expiration date of Winton. This latter issue was somewhat mollified by the Board's adoption on June 22 of emergency regulations governing unfair practice proceedings, and by passage of S.B. 1471 (Rodda) on July 11, 1976.

On July 28, 1976, additional rules were adopted by the Board. These and the unfair practice rules previously mentioned plus Resolution #7 concerning the Executive Director and the General Counsel adopted on November 2, generally comprise the rules under which the Board is now operating. These documents are included in this module.

Throughout the summer and up to the present time most of the activities have centered around voluntary recognitions and unit determination matters. On October 15, the Board released its first two precedent-setting determination decisions both of which are appended. Others should be

forthcoming momentarily. In addition, the board is now well into hearings on unfair practice cases and some decisions are expected by December. Based on written decisions, it is far too early to predict any long run trends or the philosophy which will evolve on unit or unfair matters. One thing has emerged, however; as of November, no one including the Board members is completely satisfied with all that has occurred.

Perhaps one of the reasons for some dissatisfaction can be found in the sheer workload indicated by the following data:

Total Request for Recognition: 1824

Classified	927
Certificated	892
Supervisory	5
	1824

Total Districts Involved: 910 (or 77% of 1173 total districts)*

*	1046	K-12
	69	Community Colleges
	58	County Offices of Education
	1173	

Total Interventions: 310

Employer Decisions

Voluntary Recognition Units: 1084

Classified	504
Certificated	576
Supervisory	4
	1084

Declines Recognition, Unit Question: 364

Unfairs: 97 (31 closed)

Consent Elections: 66 (involving 61 districts with approximately 20,471 eligible voters and 17,947 voted)

Impasses Declared: 57

Fact-findings: 3

It is hoped that once the parties, through their participation, establish and accept the Rules and Regulations under which they operate the hearing procedures will be expedited. Once this has been achieved the stated purpose of S.B. 160 will be realized. Section 3540 reads in part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems within the State of California....

B

TAB B

TRANSITION FROM THE WINTON ACT TO THE RODDA ACT

THE NEW RELATIONSHIP

THE TRANSITION FROM WINTON TO RODDA
THE NEW RELATIONSHIP

The implementation of the recognition procedures of the Rodda Act and the adoption of legally binding collective bargaining agreements will shortly be a fact of life in many California school districts and community colleges. As a result the employee-employer relationships established for more than a decade under the Winton Act will be abruptly revised. A new set of relationships will be established.

The nature of these new relationships can be expected to be as varied as the parties themselves perceive them to be. For those recently involved in heated negotiations, the adversary aspect of collective bargaining may appear paramount. For others it may be viewed as a legal complication of previously informal relationships. For still others it may be viewed either as the democratization of the work place or as a diminution of management rights.

Each of these characterizations of what may evolve in these new relationships carries it own validity. In both a legal and functional sense, however, the greatest changes which Rodda will bring to the former Winton relationship will be to equalize the status of labor and management and to place on both a higher degree of responsibility. It will, if patterns of the private sector are followed, also result in a greater value being assigned to the mutuality of interest in the collective bargaining relationship.

Technical Irresponsibility

It is not necessary to suggest that either of the parties under the Winton Act were irresponsible in their actions in order to conclude that employee-employer relations under Winton were technically irresponsible. Barred from entering into legally binding contracts,[1] the parties were bound by the Winton paradox to negotiate that which could not be enforced. In a word,the parties were not and could not be held to be legally responsible to their own agreements.

As a matter of statute, the Rodda Act has resolved the problem of responsibility to an agreement by providing that a negotiated agreement shall "when accepted...become binding upon both parties."[2] This, together with definition of unfair practices and the regulative functions assigned to the Educational Employment Relations Board will provide to the parties the legal and administrative mechanisms for the protection of their rights under the Act and under contract that were so sadly lacking in the Winton relationship.

The Collective Agreement

In considering the impact of binding agreements under the Rodda Act, it is important to note what arbitrator Leo Kotin has called the "duality" of the collective agreement.[3] By this Kotin observes that the labor agreement is both "... an instrument of law and an instrument of collective bargaining."

In the former sense it resembles the typical business contract, where in return for specific consideration one party has the right to expect specific performance of the other party. In the latter sense, the labor agreement differs with the business contract in that it is a statement of the temporary resolution of conflicting positions held by parties who anticipate the continuation of a relationship beyond the term of the agreement.

In view of this unique aspect of labor agreement, Kotin observes that complete agreement over the terms it is meant to cover is "illusory." Indeed, the U.S. Supreme Court in quoting Archibald Cox in its famous Steel Triology decisions[4] stated that "There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties." In short, the contract is a guide for the relationship which must be supplemented by the observations of past practices and/or continuing negotiations during its term.

It is perhaps as a result of the need for flexibility in dealing with the continuous change in the collective bargaining relationship that the private sector has seen the rise of increased mutuality in labor relations. In response to this, Harry Shulman, the long time permanent umpire for Ford Motor Company and the UAW, was lead to comment in a joint article with Professor Neil Chamberlain[5] that "Remembering that the purpose of the parties' relationship is mutual benefit from the operation of their

enterprise, the test of their success and maturity is not the rigidity of their compliance with the agreement, but rather the extent of their readiness sympathetically to understand and consider each other's need and cooperate in efforts at adjustment -- even by modification of prior agreement."

As an arbitrator, Shulman of course did not mean that a contract should not be enforced when it "hurt" any less than it should be when it was pleasant or profitable. His views, were based on the simple, pragmatic observation that apart from the mutuality of interest in the enterprise, no party in the continuing collective bargaining relationship can constantly deny quarter to the opposite party without eventually being denied it himself.

This type of reciprocal consideration was, of course, not unknown in the relations of the parties under the Winton Act. It is mentioned here simply to point out that given the experience in the private sector, there is no reason to expect that it will not be present in the relationships under Rodda.

Mutual Responsibilities

The inclusion of the so-called "sunshine" provision in the Rodda Act[6] which requires the public airing of proposals for negotiations is indicative of the increased interest of the citizen in public sector labor relations. It and the highly restrictive charter provisions recently adopted in San Francisco and elsewhere demonstrate that the public expects

to see that collective bargaining in public jurisidictions protects and furthers the interests of the public, as well as those of the parties. While not a new issue or concern to school management, teachers or classified personnel, it is a responsibility which this provision of the Act makes palpably real.

In addition to the responsibilities which are shared by the parties in regards to the public, private sector precedents suggest that both labor and management will be held to greater accountability by the employees covered by the Rodda agreements. The applicable doctrine which has grown out of a number of cases is known as the "duty of fair representation."

Duty of Fair Representation

The duty of fair representation and the potential liability for both labor and management is essentially based on the concept of agency under a contract.[7] That is, as the employee organization serves as the agent of the covered employee, it assumes the responsibility to represent the interests of the employee in any matter where there is an alleged breach of contract by the employer which would adversely affect the interests of the employee. Where this is not done and/or the employee organization is found to have been arbitrary, discriminatory, or negligent in its duties in this regard, both the employee organization and the employer can be held liable for damages suffered by the employee.

As the concept of an exclusive representative did not exist under the Winton Act, the duty of fair representation was not applicable. However, given the rights and obligations of the exclusive representative under Rodda,[8] there is every reason to think that this doctrine will apply once a contract is entered into. As a result the school employer, as well as the employee organization, has a compelling interest to see that grievances under the contract are handled expeditiously and decided with impartial fairness.

In regards to this last point, it should be noted that a recent decision by the U.S. Supreme Court[9] indicates that binding third party arbitration will not necessarily insulate the parties from a fair representation unit. Arbitration by a professional in such instances nevertheless assures the parties of as much objectivity and expert decision as can be obtained. Although a negotiable item, like many matters of the Rodda relationship, binding arbitration may well be to the mutual interest of the parties.

FOOTNOTES

1. Jefferson Elementary School District vs. Joan Bent, 41 CA 3d 962 1974.

2. California Government Code Section 3540.1 (h).

3. "Labor Agreements in Collective Bargaining," by Leo Kotin, in Proceedings, New York University Sixth Annual Conference on Labor, 1953, pp. 1-14.

4. Steelworkers vs. Warrior Navigation Company, U.S. Supreme Court, June 20, 1960.

5. "The Collective Bargaining Process," by Harry Shulman and Neil W. Chamberlain, from Readings in Labor Economics and Industrial Relations, 2d ed, Joseph Shister, Editor, J.B. Lippincott Company, Copyright 1956.

6. California Government Code Section 3547 (a) thru (e).

7. Note: For a full discussion on this and related subjects, see "Contract Administration in Public Sector Collective Bargaining", prepared under the direction of James Gallagher, UCLA Institute of Industrial Relations, 1976.

8. California Government Code Section 3543.

9. Hines vs. Anchor Motor Freight, U.S. Supreme Court, 1976.

c

TAB C

THE VALUE OF PRECEDENTS FROM OTHER SEGMENTS OF THE LABOR RELATIONS FIELD

THE VALUE OF PRECEDENTS FROM OTHER SEGMENTS OF THE LABOR RELATIONS FIELD

> Experience is of all teachers the most dependable, and...experience also is a continuous process.
>
> Mr. Justice Sutherland, in
> Frank v United States
> 290 US 371, 381 (1933)
>
> - but -
>
> The history of the rules governing contests between employer and employed in the several English-speaking countries illustrates both the susceptibility of such rules to change and the variety of contemporary opinion as to what rules will best serve the public interest.
>
> Mr. Justice Brandeis, in
> Truax v Corrigan
> 257 US 312, 357 (1921)

I. Background

With the possible exception of civil rights law over the past twenty years, no aspect of the rules and regulations by which we govern ourselves has been more subject to evolution and change than the field of labor law. As school districts and school employees make the transition from Winton to Rodda, they are participants in one of the major shifts in industrial relations of this decade - the inclusion of public employees in a collective bargaining setting.

Excluded from coverage of the National Labor Relations Act (NLRA, hereafter referred to as the ACT), employees in the public sector nevertheless had sought to engage in "concerted or protected" activity prior to the promulgation of Executive Order 10988 in 1962. However, this Order, giving federal employees certain limited collective bargaining rights, provided impetus to the demands of other segments of government employees for some sort of meaningful system of negotiating the terms and conditions of their work life with their employer.

As state laws and local ordinances were enacted, it was quite natural that those parties with a direct stake in them should examine what had worked (and what had not worked too well) for other groups of employees and employers in the United States.

Language from the ACT, from Executive Order 10988 (and, later, from the 1971 Executive Order 11491) was considered, modified, and adapted throughout the 1960s and early 1970s to apply to a mushrooming number of cities, counties, and states throughout the United States.

Since many of the concepts of these new public sector laws were borrowed from the ACT, it was also natural that interested parties should turn to precedents developed under the ACT as they sought to implement the local laws. While patterns established under the ACT are in no way binding on the public sector,

practitioners in the field generally agree that certain concepts that have stood the test of time since 1935 warrant consideration.

One difficulty is that, outside certain broad parameters, those precedents are constantly shifting. As new groups enter the work force and coverage under the ACT, and as new interpreters sit on Boards or Benches, note is duly taken of past decisions, but justification for an exception to an established rule is easily found.

As Michael I. Sovern, Dean, School of Law, Columbia University, writes in his Foreword to *The Developing Labor Law*, "Many a potential author has been deterred from trying to write a Labor Law book by the risk of being out of date before the ink is dry." 1/

Case law or precedent in the public sector is even more fluid at the present time. Not only is there a plethora of potential "precedents" being enunciated, but they stem from a wide variety of separate acts or ordinances. It is perhaps too soon, in this rapidly growing sector of labor relations, to see a pattern emerging, so that a practitioner in the field can say, "But it's *always* done this way!"

This section, therefore, will deal primarily with certain general

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1/ Charles J. Morris, et al (eds.), *The Developing Labor Law*, (Washington, D.C.: The Bureau of National Affairs, Inc., 1971), p. viii.

concepts where (1) the language of the Rodda Act closely parallels the ACT, and (2) policies enunciated by the National Labor Relations Board have remained stable and virtually intact over a period of years.

Current developments perhaps worthy of special note include an overview of recent case law emanating from the NLRB's decision to assert jurisdiction over private colleges and universities in 1970,[2/] and experiences of Michigan schools and their employees where a Public Employment Relations Act has been on the books since 1965.

It is hoped that such an overview will prove useful in several ways: First, it appears a safe assumption, based on experience to date under the Rodda Act, that in any formal proceeding at least one of the parties' representatives or counsel will be a professional who has represented clients covered by the ACT. Whatever weight they will or will not carry before the Educational Employment Relations Board, precedents and case law from both the private and public sector will be cited and cited again. In California, the State Supreme Court has specifically held, in *Firefighters Union Local 1186 vs. City of Vallejo,* (12 Cal 3d 608,) that it is appropriate to cite the ACT, and precedent cases from the private sector, when similar language exists in public sector labor statutes. If only

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2/ Cornell University, 183 NLRB No. 41, 75 LRRM 1269.

for reasons of comfort, it, therefore, seems desirable for all individuals who will be representing employers or employees to be *aware* of this fund of experience, and to be familiar, at least in a general way, with what will constitute a major portion of oral arguments and briefs.

Concepts in the field of labor relations which have prevailed over the years have generally been broad enough in nature and sound enough in logic to survive numerous "exceptions to the rule." Their durability offers pragmatic evidence of their merit.

Recognition of the unique aspects of labor relations in the public sector, and even more particularly in public education, need not preclude awareness of the things employee organizations and employers affected by the Rodda Act have in common with other working relationships in other industries and fields. Whatever can be learned from the past may well be adapted to the present.

II. Unit Determination

Perhaps because of the infinitely broader scope of types of employees and employers to be brought under the umbrella of the ACT, the ACT language on unit determination is less specific than that set forth in the Rodda Act.

The ACT provides:

NLRA Section 9(b)

> The Board shall 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: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guard

While the Rodda Act states:

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.**

It is interesting to note that the NLRA permits professionals to be part of a bargaining unit including non-professionals, if they so desire, while the Rodda Act specifically precludes mixed units of "certificated" and "classified" employees. Status of other professional employees under the Rodda Act is not specified, nor is a definition as to what constitutes a professional employee provided. It may be helpful to examine the ACT's definition:

NLRA Section 12(a)

> (12) The term "professional employee" means—
> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
> (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

1947 amendments to the National Labor Relations Act excluded supervisory employees from protection of the ACT. (Section 2(3) and 14(a)) The Rodda Act does provide for supervisory units, so long as they constitute all supervisory employees in a district,

and are not represented by the employee organization speaking for the employees they supervise.

The definition of supervisory employees contained in the Rodda Act is identical to that of the NLRA.

Within the broad guidelines set forth in Section 9(b), the NLRB has established certain policies for determining appropriateness of the unit.

An Appropriate Unit

Perhaps the keystone to its decisions is the often reiterated policy that a unit sought need not be the *most* appropriate one conceivable, nor the most comprehensive. (See 15th Annual Report of NLRB, 39 (1950)

This doctrine was clearly set forth in Federal Electric Corp.:[3/]

> Section 9(b) of the Act directs the Board to make appropriate unit determinations which will "assure to employees the fullest freedom in exercising rights guaranteed by the Act", i.e., the rights of self organization and collective bargaining. In effectuating this mandate, the Board has emphasized that the Act does not compel labor organizations to seek representation in the most comprehensive grouping of employees unless such grouping constitutes the only appropriate unit.

3/ 157 NLRB 1130 (1966), 61 LRRM 1500.

In Continental Baking [4/] the Board articulated general criteria for unit determination:

> First and foremost is the principle that mutuality of interest in wages, hours and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit. In deciding whether the requisite mutuality exists, the Board looks to such factors as to the duties, skills and working conditions of the employees involved, and especially to any existing bargaining history. In relevant cases, the Board also considers the extent of organization, and the desires of employees where one of two units may be equally appropriate. Where the employees of more than one plant of an employer are involved, such factors as the extent or integration between plants, centralization of management and supervision, employee interchange, and the geographical location of the several plants are also considered.

Multi- mployer/ mployee Units

One development in regard to unit determination in the private sector which has not as yet been presented for resolution under the Rodda Act is the concept of multi-employer units and multi-employer, multi-union bargaining.

Under the National Labor Relations Act, such multi-employers have consistently been found appropriate. Once such a multi-employer unit is established, that unit serves as "the employer" with the same responsibilities and rights as a single employer. There is

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[4/] 99 NLRB 777 (1952), 30 LRRM 1119.

one unique aspect, however, which is summarized in *The Developing Labor Law:* [5/]

> Unlike other bargaining units, the multi-employer unit is *consensual*. Essential to the establishment of such a unit is the unequivocal manifestation by the employer members of the group that all of them intend to be bound in future collective bargaining by group rather than individual action. The formation of the multi-employer unit, moreover, must be entirely voluntary, the assent of the union having representative status being also required. The Board will not sanction the creation of such a unit over the objection of any party, union or employer.

The parallel development has been the trend toward coalition bargaining, or "coordinated" bargaining on the part of unions. The best-known case in the private sector is that involving the General Electric Corporation, where in 1966 the International Union of Electrical Workers brought to the table representatives from seven other unions, stating the purpose was one of "evolving national goals and of adopting a "coordinated approach" to the negotiations with G.E. The union's right to such a committee and the company's obligation to meet with committee members was eventually upheld.[6/] Caution was expressed, however, that the specific union recognized as exclusive representative should not abdicate its responsibility and authority to other undesignated employee organizations.

[5/] Morris, op. cit., pp. 238-239.

[6/] 173 NLRB No. 46, 69 LRRM 1305 (1968) and 412 F 2nd 512, 71 LRRM 2418 (CA 2, 1969).

Potential significance of this sort of coordinated approach on the part of either employers or employee organizations in the California school system is borne out in a recent report on the experience in Michigan where school districts and school employees have been covered by a Public Employment Relations Act since 1965. 7/

In some combinations of districts in Michigan, it has been the employee organization and in others a group of employer-school districts who have initiated the pattern. Whether it will evolve in California, as it has in Michigan, in response to the needs of small and understaffed districts, or employee organizations, remains to be seen. It appears that some consideration by school district employers is being given to the concept, i.e., the School Employers' Association. 8/

Eligibility of Various Employees for Inclusion in"Appropriate Unit"

Supervisors: Given the fact that the Rodda Act uses precisely the same language as the ACT in defining supervisory employees, it could be hoped that some very clear guidelines would appear, based on decisions made by the NLRA in its recent decisions regarding faculty. Unfortunately, this does not appear at first glance to be true. At

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7/ Hy Kornbluh, "Public Schools -- Multi-Unit Common Bargaining Agents: A Next Phase in Teacher-School Board Bargaining in Michigan," *Labor Law Journal*, August (1976), pp. 520-527.

8/ For a further discussion of multi-employer bargaining trends, see *Building Your Management Team - A Framework for Public Sector Labor Relations*, an IPA Training Manual published by UCLA Institute of Industrial Relations.

Yeshiva University [9] the faculty, department chairmen, division chairmen, senior faculty and assistant deans were all found *not* to have supervisory status. This was the case regarding Rosary Hill College [10] and at New York University [11] where faculty department heads were found not to be supervisors.

However, at Syracuse University [12] department chairmen and the associate dean of the law school were excluded as supervisors and at Loretto Heights College [13] full time and part-time program directors were excluded from the unit as supervisory. The Board also excluded deans and department chairmen at Long Island University.[14]

Job Titles Not Determinative

The thread of consistency does exist, however: In each of the above cases, and in others, the Board has examined not the title,

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[9] 91 LRRM 1017, 12/5/76.

[10] 202 NLRB 165, 82 LRRM 1768.

[11] 205 NLRB No. 16, 84 LRRM 1549.

[12] 204 NLRB 85, 83 LRRM 1373.

[13] 205 NLRB 135, 84 LRRM 1163.

[14] 189 NLRB No. 110, 77 LRRM 1006 and 189 NLRB No. 109, 77 LRRM 1001.

but the duties of the position. The definition prevails and, absent an agreement between the parties which is not on its face a violation of that definition, the Board must examine the specifics of job content to determine supervisory status.

In the New York University decision referred to above, the Board also examined the supervisory status of librarians. In this regard they determined that librarians would not be considered supervisors if they exercised supervisory authority less than half of the time.

Growing out of a charge of supervisory domination of a union organizing effort at the University of Chicago,[15/] the Board further developed its concept of librarians and supervisory status: Here they found that although librarians might supervise clerical employees, this did not disqualify them from coverage under the ACT, nor constitute interference. The Board did, however, find that certain professional librarians were, for purposes of the NLRA, supervisors when they supervised other professional librarians. The assumption in many cases involving professionals and support staff seems to be that a professional's duty to instruct or advise should be distinguished from traditional supervisory responsibilities.

15/ 205 NLRB No. 44, 83 LRRM 1678.

In the public school sector, the prevailing pattern seems to be one of confusion. In the Pennsylvania courts on December 23, 1974, the Pennsylvania Labor Relations Board was upheld in its findings that school department heads who are teachers with time free from teaching duties in which to perform their obligations on behalf of the school district are *not* supervisors.[16/] Yet three short months later, the courts overturned the PLRB's decision to include department heads, head coaches and the athletic director, finding that these employees *were* supervisors![17/] One can only assume that, again, the title of department head carried a different list of job duties in the two school districts.

Part of the apparent discrepancy in rulings on the supervisory issue undoubtedly rests in the fact that a Board or court in each case must rely on the evidence presented to it. The NLRA (and the Rodda Act) definition clearly refers to an individual or group having the "authority to...." Thus one party's claim that an employee does or does not perform supervisory functions can often be countered by an employer's claim that while the individual may or may not perform certain tasks, he or she has or has not the *authority* to do so. Since authority is proffered or withheld by

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16/ PLRB v. Altoona School District, 91 LRRM 2878.

17/ Bermudian Springs School District, 89 LRRM 2092.

the employer, testimony of the employer's witnesses normally prevails, unless strong and objective counter-evidence is presented.

Casual vs Regular Part-Time Employees

The NLRB has traditionally excluded what they consider "casual" employees from bargaining units, while including "regular part-time." Whether or not a community of interest and continuing interest in employment exists has generally been the criteria for separating the two groupings.

However, it would appear from recent decisions that the Board has been using somewhat differing criteria where the employer is an educational institution:

In 1973, the Board included as "regular part-time employees" students employed by a supermarket, even though the employer testified that "they come and go all the time" and regularly terminate upon graduation,[18] while finding at Barnard College[19] and Cornell University [20] that students should be *excluded* from a unit although they did work similar to other employees, often under the same supervision, but were interested for the most part in employment only until they graduated.

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[18] Gruber's Star Market, Inc. 201 NLRB No. 98, 82 LRRM 1495.

[19] 204 NLRB No. 155, 83 LRRM 1483.

[20] 202 NLRB No. 41, 82 LRRM 1614.

In a recent decision outside of an educational setting, the Board found that students employed as part-time clerks in a newspaper's circulation department should be included in the unit.[21/] Yet in a nursing home (another area where the Board has only recently taken jurisdiction), the Board found that high school students working 20 hours weekly as utility service workers should be *excluded*, because their tenure is of limited duration. [22/] Yet in the private sector, in a more traditional jurisdiction, the Board found it proper to include students working at the plant, although their work was part of a work experience program.[23/]

Here, as in other areas where the Board has ruled on specifics, it is difficult to find a set of firm rules about which one can generalize.

In 1973, the Board reversed its earlier policy regarding part-time faculty in New York University: [24/]

> We are now convinced that the differences between the full-time and part-time faculty are so substantial in most colleges and universities that we should

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[21/] Hearst Corp. 90 LRRM 1468 11/4/1975.

[22/] Highview Inc. 92 LRRM 1088 4/6/1976.

[23/] W & W Tool & Die Mfg. Co. 93 LRRM 1006.

[24/] 205 NLRB No. 16, 83 LRRM 1549.

> not adhere to the principle announced in the New Haven case. 25/

The differences which the Board found prevailing were in regard to compensation, participation in university government, eligibility for tenure, and working conditions.

This policy has remained constant as recently as December 5, 1975, when, in Yeshiva University 26/ part-time faculty members were excluded from a faculty unit.

In Yeshiva, the Board also excluded two full-time faculty members whose appointments were subject to special funding and derived from non-university funds.

Part-Time Faculty Placement in Units

Decisions in the field of public education do not appear to be in full accord with the NLRB's posture on the question of part time vs. casual. The Pennsylvania Employee Relations Board, in Erie County Area Vocational-Technical School 27/ ruled that regular part-time teachers should be included in AFT's certified unit of

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25/ 83 LRRM 1552.

26/ 91 LRRM 1017.

27/ PERA-U-5238-W, 9/13/1974.

regular full-time professional personnel, including substitutes. Substitute teachers in Eugene, Oregon, have been awarded the right to bargain collectively, in a separate unit, over the school district's contention that they were casual employees, and thus not covered by the Public Employee Collective Bargaining Act. This decision is still open for appeal. At Michigan State University, the Michigan Employee Relations Commission found students with part-time jobs entitled to representation.

Professional Employees

Absent specific language in the Rodda Act, it remains to be seen as to whether members of a given profession will be afforded the choice of separate representation which is their right if they so desire, under the NLRA.

Los Angeles County, in 1969, began the process of unit determination for its over 60,000 employees. Of 115 petitions received by the County Employee Relations Board, 47 appropriate units emerged. Of these, only four units were established for employees numbering less than 100. All of these were clear professional groupings (dentists, pharmacists, etc.) Only eight were found appropriate for groupings of less than 200 employees. These were either professional or supervisory in nature.

Technical Employees

The NLRB has recently tended to accept as appropriate units grouping technical employees with others. In American Motors,[28/] included in an office unit were employees who might earlier have been found to have technical status. This ruling adhered to the Board's earlier holding in Sheffield Corporation [29/] that in the future technical employees would not automatically be excluded from a production and maintenance unit, but that their placement would be evaluated on a case by case basis.

Craft Units

One of the earlier Board decisions which was later to attain the status of "doctrine" was that involving the wishes of certain groupings of employees for representation in a smaller "craft" unit of their own, instead of being part of a larger unit which by other standards would be found appropriate.

In Globe Machine & Stamping Company [30/] the Board provided for such a group of employees to vote not only for or against union representation, but for or against inclusion in a larger unit.

[28/] 206 NLRB 38, 84 LRRM 1257.

[29/] 134 NLRB 1101, 49 LRRM 1265 (1961).

[30/] 3 NLRB 294, 1-A LRRM 122 (1937).

Thus, reference is frequently made to the Globe Doctrine or a "Globe Election" in advocating the right of a group of employees to seek a special unit of their own.

The NLRB's 1966 Mallinckrodt Chemical Works decision [31] articulating the criteria which would be observed in ruling on whether or not a craft unit might be severed from a larger unit, has also been applied to initial formation of new units:

> 1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
> 2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
> 3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
> 4. The history and pattern of collective bargaining in the industry involved.
> 5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
> 6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action. [32]

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[31] 162 NLRB 387, 64 LRRM 1011.

[32] Morris, op. cit., pp. 228-229.

The problem which small school districts may encounter in applying Mallinckrodt to their situations is that, even given the limitations placed on recognition of individual craft units, the fragmentation might be excessive.

In Los Angeles County, a solution apparently satisfactory to all parties was the establishment of a unit comprising employees from different recognizable crafts, with the Los Angeles Building Trades Council serving as representative of record.

Unit Determination Summarized

1. Neither precedent or language of SB 160 require that a unit be *the* most appropriate one.

2. The NLRA and Rodda Act have in common a requirement that in determining units consideration be given to

   (a) community of interest of the employees
   (b) established practices (bargaining history)
   (c) exclusion from a general unit of management, supervisory, and confidential employees.

3. The NLRB criteria for determining community (or mutuality) of interest may well be used by the EERB. (See quotation from the Continental Baking case, footnote 4.)

4. Eligibility of various employees will depend on specifics rather than job titles.

   (a) Does a "supervisor" actually have supervisory authority and duties?
   (b) Does a "part-time" employee have a continuing interest in his/her employment or is that employee a "casual?"
   (c) Does "community of interest" necessitate that a "craft" or "technical" group of employees be served from a larger bargaining unit?

III. Unfair Labor Practices

In the Rodda Act, as in the National Labor Relations Act, it was felt necessary not only to state that the employer and employees had certain rights, but to define acts by either party which would endanger those rights.

Thus, certain conduct is declared unlawful.

The language in the Rodda Act concerning unfair practices on the part of a public school employer or an employee organization is identical in intent to that of the NLRA. The NLRA language also includes rights and restrictions affecting organizational security which is covered elsewhere in Rodda, and includes as unfair practices by labor organizations a number of areas not covered by Rodda.

The Rodda Act reads in Section 3543.5 and 3543.6:

> **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).

To make a comparison with relevant sections of the ACT, the following is a condensation authorized by the NLRB, appearing in their publication, "A Layman's Guide to Basic Law under the National Labor Relations Act"

Section of the Act	**CA**
8(a)(1)	To interfere with, restrain, or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).
8(a)(2)	To dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it.
8(a)(3)	By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.
8(a)(4)	To discharge or otherwise discriminate against an employee because he has given testimony under the Act.
8(a)(5)	To refuse to bargain collectively with representatives of his employees.

Section of the Act	**CB**
8(b)(1)(A)	To restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).
8(b)(1)(B)	To restrain or coerce an employer in the selection of his representatives for collective bargaining or adjustment of grievances.
8(b)(2)	To cause or attempt to cause an employer to discriminate against an employee.
8(b)(3)	To refuse to bargain collectively with employer.
8(b)(5)	To require of employees the payment of excessive or discriminatory fees for membership.
8(b)(6)	To cause or attempt to cause an employer to pay or agree to pay money or other thing of value for services which are not performed or not to be performed.

Under NLRB rules, a violation of 8(a)(2) through (5) is an automatic violation of Section 8(a)(1).

Over the years, the NLRB has had most difficulty in defining refusal to bargain in good faith 8(a)(5). Often interwoven in charges filed pursuant to this section are those involving an alleged violation of 8(a)(2), (supporting or dominating one union in preference to another). Comparable sections in the Rodda Act are 3543.5(c) and (e) and (d).

This "double jeopardy" occurs in the private sector when an employer is faced by demands from one labor organization to bargain in good faith, while another has made representation claims for the employees involved.

It is conceivable that similar problems could arise in the California public school sector, particularly during the first year or so of shifting from the multi-recogniation involved under the Winton Act, to the exclusive representative status provided for under Rodda.

In the early days of the ACT, it was not uncommon for an employer to actually and openly *create* an employee committee or association, support it, dominate it through supervisory personnel, and use it as a bar to employees obtaining legitimate representation.

This practice has become less blatant in the private sector, and more recent cases involve examining the gray line between "support" and "cooperation."

Under NLRA it has not generally been held a per se violation for an employer to indicate a *preference* for one of two competing employee organizations, but any preferential *treatment* can be viewed as suspect. Rodda goes a step further, declaring it unlawful for an employer to "in any way encourage employees to join any organization in preference to another." (3543.5(d))

One of the landmark cases under the ACT, and one still referred to in recent decisions, was Midwest Piping Co., Inc.[33/] Here, two unions had petitioned the NLRB for an election. The employer chose to recognize one while the petitions were pending, entering into a closed-shop contract with the Steamfitters. The Board found this action violated Sections 8(a)(1) and (2), by giving illegal "support" to the Steamfitters. Thus was established the "Midwest Piping Doctrine," declaring it an unfair labor practice for an employer to recognize one of two or more competing unions after a representation question had been submitted to the Board by the filing of a petition.

This doctrine was refined over the years, to allow for a "good faith" doubt, and also to recognize a legitimate problem involved if negotiations with an incumbent union had to be held in abeyance (thus leading to 8(a)(5) charges) by an obviously spurious claim

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33/ 63 NLRB 1060, 17 LRRM 40 (1945).

of a different organization.

In Shea Chemical Corp., [34/] the Board restated its position:

> Upon presentation of a rival or conflicting claim which raises a *real* question concerning representation an employer may not go so far as to bargain collectively with the incumbent (or any other) union unless and until the question concerning representation has been settled by the Board.

And, in the same ruling:

> The Midwest Piping Doctrine does not apply in situations when, because of contract bar or certification year or other established reason, the rival claim does not raise a real representation question.

The courts have not given the credence to the Midwest Piping Doctrine that the Board has. On a number of occasions they have overturned Board rulings which found an employer guilty of an 8(a)(2) violation for having negotiated and reached agreement with an incumbent union in the face of a rival petition pending.

The difference between the Board and the courts seems to rest in the definition of "real" question.

Overturning the Board's finding of a real question concerning

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[34/] 121 NLRB 1027, 42 LRRM 1486.

representation which required employer neutrality until an election could be held, the ninth circuit refused enforcement of a board order and commented that every circuit court confronted with the issue has "consistently refused to find a violation...when an employer has recognized one of two unions competing for exclusive recognition on the basis of a clear demonstration of majority support." Note was taken of the Board's statement in this case that it would continue to adhere to its view until the U.S. Supreme Court has settled this issue.[35/]

The courts sustain the doctrine when they find that a "*real*" question of majority status does exist: In a recent decision dealing with this problem, the courts sustained the NLRB's finding that the employer was not free to deal with the union which had formerly represented the majority of employees involved when two separately organized warehouses were consolidated at a new location. [36/]

Under Rodda, the "real question" of representation appears to be somewhat more tractable in that the procedure for determining most of the answers are written into the Act.

One of the areas in which this problem may have relevance to school

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[35/] NLRB v Inter-Island Resorts, Ltd. 507F 2d 411, LRRM 3075 (CA9).

[36/] NLRB v Hudson Berlind Corp. 494 F 2d 1200, 86 LRRM 2008 (CA 2).

districts involves consolidation or merger of two facilities or districts where employees had been represented by different unions.

The EERB, under Rodda, is specifically empowered:

> 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. 37/

Refusal (or Failure) to Negotiate in Good Faith

The actual phrase "good faith" did not appear in the original National Labor Relations Act.

At the time the 1947 amendments were being considered and debated, two concerns regarding obligation to bargain were reflected in wording which placed an equal responsibility to bargain on unions, and which attempted to provide some sort of objective standard for determining whether either party had "refused to bargain."

The emerging language which is part of the ACT as amended, reads:

> For the purpose of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees 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

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37/ Article 2, 3451.3(m)

> 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: PROVIDED, That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract. (Except at termination of Agreement.)[38/]

Totality of Conduct

The concept of good faith bargaining has continued to be an elusive one. The Board has generally found it necessary to view totality of conduct, rather than relying on one specific act (other than an outright refusal to come to the bargaining table).

Summarizing the Board's findings regarding totality of conduct, in *Developing Labor Law*,[39/] the authors have woven quotations from various Board rulings into one paragraph:

> **A. Totality of Conduct**
>
> The duty to bargain in good faith is an "obligation . . . to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement. . . ." [48] This implies both "an open mind and a sincere desire to reach an agreement" [49] as well as "a sincere effort . . . to reach a common ground." [50] The

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38/ For full discussion on obligation to bargain during life of agreement, see *Contract Administration in Public Sector Collective Bargaining*, an IPA Training Manual published by UCLA Institute of Industrial Relations, (Tab D).

39/ Morris, op. cit., p. 278.

> presence or absence of intent "must be discerned from the record." [51] Except in the cases where the conduct fails to meet the minimum obligation imposed by law or constitutes an outright refusal to bargain,[52] all the relevant facts of a case are studied in determining whether the employer or the union is bargaining in good or bad faith, *i.e.*, the "totality of conduct" is the standard through which the "quality" of negotiations is tested.[53]

Further cases (including the famous General Electric case referred to in the appendix to this section) clarified that the ACT required a bargaining *process* to occur. This concept was validated by the Supreme Court in H.K. Porter:[40/]

> The object of this Act was...to ensure that employers and their employees could work together to establish mutually satisfactory conditions. The basic theme of the Act was that through collective bargaining, the passions, agreements, and struggles of prior years would be channelled into constructive, open discussions leading, hopefully, to mutual agreement.

In viewing totality of conduct, engaging in what has come to be termed "surface bargaining" will not spare either party from being found guilty of refusal to bargain in good faith. In other words, merely coming to sessions as scheduled but failing to participate in the *process* described above does not meet the requirements. Dilatory and delaying tactics have been found evidence of surface bargaining, as has failing to seek alternative or compromise

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[40/] 397 US 99, 73 LRRM 2561, 2562 (1970).

solutions on at least some of the issues separating the parties.

Refusal to Concede

While refusal to make concessions in not in and of itself a violation, failure to make *any* movement toward agreement has traditionally been viewed as an indication of bad faith.

In NLRB v.Reed & Prince Mfg. Co.,[41/] the decision read in part, "While the Board cannot force an employer to make a 'concession' on any specific issue or to adopt any any particular position, the employer is obligated to make some reasonable effort in *some* direction to compose his differences with the union, if section 8(a)(5) is to be read as imposing an substantial obligation at all."

Holding firm on one or more issues considered vital to the party is not generally a per se violation, or evidence of bad faith. In NLRB v. American National Insurance Co.,[42/] the Supreme Court upheld the Fifth Circuit court, which had denied enforcement of the NLRB ruling that the employer's insistence on an extremely broad management-function clause, exempting from the arbitration process a number of issues often grievable, constituted bad faith. The Court commented on the concept of good faith bargaining being

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41/ 205 F 2d 131, 32 LRRM 2225 (CA 1953).

42/ 343 US 395, 30 LRRM 2147 (1952).

a "two-way street," and pointed out that the inability to reach agreement was caused not only by the employer's unyielding position, but also to the union's firmness in opposing the proposed language.

Other "Bad Faith" Conduct

Other indications of bad faith bargaining include dilatory tactics, making further bargaining conditional on satisfactory resolution of certain demands, by-passing the party's representative, refusing or delaying in supplying relevant information to the other party, and unilateral changes in working conditions.

In a recent case, the courts upheld the Board's finding of an 8(a)(5) violation where many of these factors were present. 43/ In enforcing the Board's order, the court stated that, while some of the employer's acts alone might not have supported the bad-faith charges, the record as a whole left no doubt as to the employer's violation of the ACT. The overall conduct in negotiations which the court criticized included delaying tactics, unreasonable bargaining demands, efforts to bypass and undermine the union and the making of unilateral changes in mandatory subjects of bargaining.

43/ Continental Insurance Company vs. NLRB, 495 F 2d 44, 86 LRRM 2003 (CA 2).

Authority of Negotiator

One other aspect of a finding of bad faith bargaining is tied to "surface bargaining" and "dilatory tactics." The Board has ruled that an employer has an obligation to have present at the bargaining table an individual with authority who is capable of meaningful participation in negotiations.

Thus, in Coronet Casuals, Inc. 44/ the Board found the employer guilty of dilatory tactics, not only because of the time lapses between sessions, but also by not providing a bargaining representative informed enough about the employer's operations that he could engage in fruitful discussion. The Board said, "the duty to bargain in good faith is not fulfilled by sending an uninformed messenger to negotiations, while those with knowledge and decisional authority absent themselves from the discussions."

Findings of Bad Faith in Education

Two recent decisions dealing with good faith bargaining in a school setting are worth noting; one is from the private and the other from the public sector.

The private school case involved a situation where a successor employer, (the Roman Catholic Diocese of Brooklyn) 45/ was

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44/ 207 NLRB No. 24, 84 LRRM 1441.

45/ 91 LRRM 1419.

found to have unlawfully fixed teachers' initial terms and conditions of employment without consulting the union which represented the predecessor's teachers.

In Pennsylvania, the courts found that the State University had not violated the good faith requirements of that state's act covering public employees in a series of "meet and discuss" sessions. The issue involved proposed reallocation of faculty; numerous sessions were held with the union; the union was offered the opportunity to have representatives at administrative budget meetings; subsequently, while all of the union's demands were not met, the court found that a charge of bad faith would not hold, in view of the fact that alterations were made in the proposed budget to include funds for sabbatical replacements, which the court identified as the union's primary objective.

Recent Precedents from the Public Sector

Over the past few months, several decisions have come down from boards equivalent to our EERB, some reviewed by State courts. While each Employee Relations Board functions under different rules, and receives its power from an ordinance which differs in detail from SB 160, it should be worthwhile to study rulings on issues similar to what the EERB is or will be asked to rule on. Summaries of three decisions, as reported in GERR, are included

here. The similarity in language and content to decisions from the private sector becomes apparent as one analyses the rationale underlying the awards.

In summary, while new interpretations will perhaps shift the emphasis or somewhat alter the "doctrines" of United States labor law, it seems unlikely that as new groups of employees and employers are given the opportunity and the obligation to function in a collective bargaining setting, there will be any drastic or sudden switch from the tenets that have been developed since the Wagner Act of 1935.

Just as the opening section of the National Labor Relations Act states in part:

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

so the beginning sentence of the Rodda Act reads:

> **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.**

The premise that American working men and women should have an established procedure for making meaningful input into the terms and conditions of their employment seems established in our society. How it will be implemented in coming years will in large measure be determined by pragmatic decisions based on "what will work," as new sorts of employees and employers become involved in the process.

Awareness of what has gone before is only one source of knowledge on which present and future practitioners should rely. But it is an important source.

APPENDIX TO TAB C

Case-Name Labor Relations Terminology

Major Decisions

NLRB Procedures and Practices with Reference to the Rodda Act

Case Names Which Have Become Part of the Labor Relations Vocabulary

Certain National Labor Relations Board decisions were so far-reaching in their significance that the name of one of the parties has become a short-cut, commonly-used term to refer to similar conduct, situation or procedure. The following are ones likely to be heard in discussions of Rodda Act - EERB matters:

Excelsior List: When an employer is required to submit the names and addresses of employees in a given bargaining unit for the use of all concerned parties, that information is referred to as "The Excelsior List," because of a decision made by the NLRB and subsequently upheld by the U.S. Supreme Court, that the Board had the right to require such material from the employer, in order to allow fair access to employees by all parties to an election. (Excelsior Underwear, Inc. (156 NLRB 1236, 61 LRRM 1217, 1966)).

Boulwarism: In this case, it is an individual rather than the corporation employing him, who has provided labor relations practitioners with an adjective. In 1964, the General Electric Company was found guilty of a 8(a)(5) violation. The firm's Vice President of Public & Employee Relations, Lemuel R. Boulware had formulated and practiced a policy of (1) making one offer and not moving from it at the bargaining table; (2) circumventing the Union by taking its offer directly to the employees and attempting to persuade

them to accept it by various means; (3) conducting a public relations program designed to discredit the union in the eyes of its members and the public.

The Steelworkers Trilogy: Here, the Union involved provides the term for significant precedent involving the legal status of the arbitration process.

The steelworkers trilogy is a set of three decisions by the Supreme Court, which provided greater weight and legal integrity to the arbitration process. In the first case, Warrior v. Gulf Navigation (46 LRRM 2416)(1960) the Court ruled that the courts may not hold a grievance non-arbitrable unless the issue is specifically excluded from the arbitration process. Doubts as to coverage should be resolved in favor of allowing arbitration. The second case, American Manufacturing (46 LRRM 2414) determined that courts may not rule on the merits of an arbitration case. Only an arbitrator may dismiss a grievance as being without merit. In the third case, Enterprise Wheel and Car Corporation (46 LRRM 2423) (1960), the Court held that courts may not be used, by any party, to set aside an arbitrator's award, and that the awards are enforceable in court. The result of these decisions has been to resolve jurisdictional disputes between arbitration and the courts in favor of the arbitral process.

Collyerizing: Collyerizing a case means deferral of unfair labor practice charges to the grievance and arbitration machinery provided in the contract. In Collyer Insulated Wire (192 NLRB 150) (1971), the NLRB ruled that, if the labor agreement contains a final and binding arbitration clause, any case also involving a contractual issue will be deferred by the Board to arbitration. The arbitration must follow guidelines set down in the Spielberg case (112 NLRB 1080) (1955): The arbitration hearing must be fair and regular, the arbitration award must be final and binding, and the award must not be a clear contradiction of the purposes and policy of the NLRB.

The Rodda Act contains a section which defers cases from the EERB to arbitrators. Section 3541.5(a)(2) states:

> Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board (EERB) shall not... 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.

(City of Cedar Falls and Over Road And City Cartage Drivers, Local 844; Iowa PERB, Case No. 712, July 1, 1976.)

* * *

Bargaining Violations -- Surface Bargaining (Iowa Perb)

In a second case dealing with cross charges of improper practices, the Board rejects the contention of the Area I Vocational-Technical School District that the Higher Education Association acted contrary to law by insisting on including permissive subjects as a condition of reaching agreement. However, PERB finds validity in the association's position that the employer engaged only in surface bargaining.

The association was certified in December 1975 as the bargaining agent for professional employees. The first two bargaining sessions basically covered the association's demands. Two other meetings were held with a FMCS mediator and although there was some movement, the Board points out that "all of the association's proposals remained on the table and management still did not make any offer on the subjects set forth above, including most, if not all, direct economic matters." Subsequently, the association requested that the parties proceed to fact finding.

Pertinent to the dispute is Rule 6.1 which states:

"Either party may introduce other matters for negotiation, and negotiation on such other matters may continue until resolved by mutual agreement of the parties or until negotiations reach the fact-finding or arbitration state of impasse. Unresolved other matters shall be excluded from the fact finding or arbitration processes unless submission has been mutually agreed upon by the parties. . ."

The intent of the rule, the Board explains, "is to permit negotiation on the fullest range of lawful subjects and pursuit of all avenues to a contract settlement without fear that mere discussion of a permissive item might render the item mandatory and constitute revocation of the freedom not to bargain and not to agree on their inclusion in a collective bargaining agreement."

Reaffirming what it said in its prior decision in the Bettendorf-Dubuque case (GERR 651, B-4), PERB states that it is its position "that insistence as a condition to an agreement on a non-mandatory subject constitutes an unlawful refusal to bargain in good faith."

"As a matter of proof," the Board adds, "it is not enough to show only that a party more than once requested a contract clause concerning a non-mandatory subject, or that non-mandatory items remained on the table during mediation."

From now on, however, PERB explains that it will "consider the submission of non-mandatory subjects to the fact-finder a per se violation of this standard in the absence of the written agreement required by Rule 6.1, irrespective of the presence of mandatory subjects of fact-finding or the absence of an impasse as defined in the Bettendorf-Dubuque case."

On this basis, the Board concludes that the association did not violate the act, stating:

"The uncontradicted testimony is that at no time was it stated or inferred that agreement could not be reached unless any particular subject alleged by the complainant as non-mandatory would be included. Nor can we conclude that the parties reached impasse during the period in question; indeed, there had been no discussion, much less negotiation, on the primary economic aspects of a collective bargaining agreement, a condition neither caused nor contributed to by the presence of alleged non-mandatory subjects in the association's initial proposals."

Turning to the companion charge the Board finds that the evidence supports the association's contention that the employer engaged only in surface bargaining by failing to make counter-proposals.

The Board gives this explanation:

"The compelling factor in this case is that, in spite of the small number of bargaining sessions, the parties had at the time of the filing of this complaint engaged in two mediation sessions and were proceeding to fact finding. Notwithstanding the association's continued demands that a counter-proposal on economic matters be placed on the table, the respondent failed to make any proposal which might have moved the negotiations toward settlement . . . The period for free collective bargaining in the absence of imposition of an outside neutral was concluded with the employer having made virtually no counter-proposals or offers in many mandatory areas of bargaining. We cannot conclude under these circumstances that the school district was negotiating in good faith when it passed through mediation and approached fact finding without having made any offer which could have permitted real progress toward a contract."

In a dissenting opinion, Chairman Edward F. Kolker says he disagrees with the majority ruling on the surface bargaining issue. While there was "mutual hostility" in the bargaining environment, Kolker says that in his opinion, "the record in this case is inadequate to decide a surface bargaining case of first impression before this Board."

As Kolker sees it, the majority would not have found a basis for sustaining the surface bargaining charge "but for the imposition of impasse procedures."

Continuing with his remarks, the chairman has this to say:

"Clearly, the imposition of these impasse procedures was not a matter of free collective bargaining but was a situation thrust upon the parties by a single party request pursuant to statute and the rules of this agency. Further, it is my opinion that to identify two bargaining sessions as the 'period for free collective bargaining,' and attach legal significance to it, is an unrealistic appraisal of the bargaining process. Thus, it would appear that bargaining which may otherwise be in good faith is somehow, under the facts presented herein, transformed into surface bargaining by the introduction into the bargaining sessions of a federal mediator. Moreover, although it is a fact that mediation did not produce a contract, it is my opinion that under these facts the parties had not bargained to a point at which mediation would provide even a reasonable expectation of settlement. This is apparently evidenced by the fact that the mediator and the association threw in the towel after two sessions and fact finding was requested by the association."

(Area I Vocational-Technical School District and Area I Higher Education Association; Iowa PERB, Case Nos. 650 and 664, June 29, 1976.)

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CONTRACT VALID EVEN THOUGH SIGNED UNDER DURESS OF STRIKE, N.Y. COURT SAYS

A collective bargaining contract is valid even though signed under the alleged duress of a teachers' strike, rules a Westchester County, New York, trial court. The Taylor Act (RF 51:4111) does not include voiding the contract as one of its penalties, according to Supreme Court Judge Leonard Rubenfeld.

BNA

NEWS—STATE & LOCAL

BAD FAITH BARGAINING CALLED "STATE OF MIND" WHERE POSITIONS DON'T BUDGE NOR COUNTER OFFERS CONSIDERED

The Edgeley Public School District in North Dakota negotiated in bad faith with the Edgeley Education Association by refusing to budge from its initial offer of a $700 pay raise and refusing to consider EEA counter offers, Lamoure County District Court Judge William Beede rules. He thus orders the parties to resume negotiations and prohibits the school board from accepting or putting into effect any individual teaching contracts or from hiring any new teachers as replacements, because it had tried to deal with individuals instead of their bargaining agent.

EEA and the school board began bargaining for a 1975-76 school year contract March 17, 1975, and met over eight times until May 27. North Dakota's teacher negotiations law requires parties to bargain in good faith (RF51:4312), but the continuing contract provision of the education law requires that a teacher notify the school board before May of of his acceptance or rejection of reemployment and that failure to provide such notice relieves the board of its continuing contract provision, which is the obligation to rehire a teacher for another year.

By May 15, the teachers failed to give the board an unqualified acceptance or rejection of their implicit continuing contracts under section 27 of the education code. Instead, EEA gave the board a qualified intent acceptance and a counter bargaining offer, so on May 24 the board sent individual teachers a letter giving them one week in which to submit a proper acceptance of their teaching contract renewals.

The association filed suit alleging that the district did not negotiate in good faith under the negotiations law; the district denied the charge, maintained it did negotiate in good faith, and said its actions were authorized by statute.

The phrase "to negotiate in good faith," is not specifically defined in the labor relations law, but Judge Beede finds it "obvious that good faith is a state of mind which can be ascertained only from all of the facts in each case." It would not be good faith for an employer to hamper employees' efforts to negotiate through their representative organization by issuing employment contracts to individual teachers or otherwise deal with or present ultimatums to individual teachers, he observes.

But after studying the letter the board sent to the individual teachers regarding reemployment, the judge characterizes it as a letter of explanation to dispell some uncertainty, rather than as one of coercion. After EEA commenced its litigation May 29, the district subsequently sent out and issued individual teaching contracts on June 13. The judge has this to say:

> "In these actions the district clearly was dealing directly with the individual teachers over the head, so to speak, of their negotiation representative. Such actions hampered and interfered with the efforts of the teachers to negotiate collectively. Such actions amount to bad faith negotiations and would justify the court granting relief in favor of the association and against the district unless that action was permitted under another law."

The other law is section 27 of the education code relieving the board of continuing contract obligations upon failure of a teacher to accept or reject a contract by May 15. The state supreme court has pointed out that even though negotiations are in progress, section 27 provisions are not suspended and they mandate the board to take action to obtain teachers for the school system.

Judge Beede remarks that while the negotiations act and section 27 present a problem in reconciling two conflicting statutory duties, the supreme court has said the legislature did not intent to repeal or amend section 27 and that while there is a need for appropriate adjustment between the statutes, such adjustment requires further legislation.

Turning again to the issue of good faith, the judge says it would not be good faith to enter into negotiations with a preconceived determination not to accede in any respect or not to seriously consider what the other side might offer. Nor would it be good faith to take a posture from the beginning from which one would not budge.

The judge relates that the district started out in negotiations offering a $700 pay increase over the previous year at a cost to the district of $23,000 and ended up offering a $700 increase on base salaries plus some increments and extra pay for extracurricular assignments at an estimated cost of about $25,000, a difference he terms "slight." The $23,000 figure is about one-third of the $62,000 of State School Foundation Fund money the Edgely school district was certain it would receive in the 1975-76 school year, the judge adds.

According to Judge Beede, it is not particularly significant that the district's offer may not be comparable to that of other districts in the state, that it may not be fully responsive to the legislative intent in the appropriating law, or that it may or may not be inappropriately modest and not what the association wanted. He declares:

> "What I do find significant, is the fact that the board didn't move an inch, so to speak, from its original proposal. It started out with the $700 bonus and ended up with the $700 base. As counsel pointed out, this is more of a change in semantics than anything else, because the effect is the same within a few dollars.
>
> "It appears to the court that the board never did come off of its first offer and more importantly, did not satisfactorily keep an open mind to the facts that were put forth by the other side and consider them.
>
> "I am acutely aware that in negotiations under the act, that there is no mandate that any concession must be made, nor is there any mandate that an agreement must be reached, but in applying the test of good faith to this situation, I find there is conflicting testimony as to whether or not the district kept an open mind, whether or not the district entered negotiations with a predetermined figure and refused not only to change it, but more importantly refused to re-examine its budget to see if there were any possibilities of juggling figures to accommodate the offers from the other side."

In an addendum, the judge notes that in its budget the board allocated funds for several unlikely possibilities, such as a boiler blowing out, and to this extent there was some fat in the budget which reduced the funds otherwise available for teacher salaries. Moreover, in March the board planned and later arranged for a special election in June for authority to raise the levy 75 percent over existing law which would have brought in an extra $13,400. While the levy was later defeated, at no time during negotiations did the board ever suggest that depending on the success of the election, it might be able to consider changing its original offer of $700. "From the negotiating meeting of May 20 and 27, it appears instead that the board's fixed position was that it would not move off of that figure of $700," Judge Beede declares.

He also finds two situations which amount to board admissions that this was its position: an affirmative reply when a board negotiator was asked if the board took the stance it would grant a $700 raise and never budge, and a negative response when asked if at any board meeting anyone ever discussed raising the amount for teacher pay above $700. "That doesn't strike me as being open-minded and endeavoring to seek a solution to the problems facing the two teams in negotiations," he observes.

Judge Beede says he makes a finding of failure to negotiate in good faith "with no little reluctance" because an injunction comes near the opening of school and could compound problems and be contrary to the interests of the public and the students themselves. In this regard he notes testimony of Arvid Anderson, chairman of New York City's Office of Collective Bargaining, who said he was surprised neither side invoked impasse procedures, since it seemed to be exactly what both parties needed. The judge observes:

> "I got the feeling today from the testimony that both sides may have been unaware of the fact that one side, unilaterally, all by itself, could make the determination to go to impasse. And away they'd go. It didn't require an agreement by both sides to go to impasse. Maybe that was part of the problem here. I don't know. But I am inclined to agree that that is what both parties needed and probably should have done."

Suggesting that it would have been helpful for the parties to engage in impasse procedures and get either a "dutch uncle" mediator or a report from the educational fact-finding commission, the judge says in either event "there would have been brought into the picture some people with expertise, some people who are better equipped than your district court to consider and to appreciate and to make findings and recommendations on what are probably the two most important . . . conflicting issues" of teachers' concern with the cost of living, and the district's and taxpayer's concern with the ability to pay.

The court orders the district to stop accepting or putting into effect any contracts issued to association members and to stop hiring any persons to replace any of the teachers who are association members. He says the injunction will continue until the parties themselves formulate their own agreement at the negotiating table, until a mediator's report is received, or until findings and recommendations of a fact-finding commission are made public.

(Edgeley Education Association v. Edgeley Public School District No. 3; Lamoure County District Court, Third Judicial District, August 8, 1975.)

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PLRB v. UNIVERSITY FACULTIES

Pennsylvania Commonwealth Court

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA LABOR RELATIONS BOARD v. ASSOCIATION OF PENNSYLVANIA STATE COLLEGE and UNIVERSITY FACULTIES/PENNSYLVANIA ASSOCIATION OF HIGHER EDUCATION, BUREAU OF LABOR RELATIONS, Intervening appellee, No. 1119 C.D. 1975, April 19, 1976

STATE PUBLIC EMPLOYMENT RELATIONS ACTS

—Meet and discuss sessions—Good faith requirement — Standards — State university — Pennsylvania Act ▶ 100.02 ▶ 54.500

Good faith standard for "meet and discuss" sessions implicit in Pennsylvania Employee Relations Act (SLL 48:221) does not require observance of same standard applicable to collective bargaining sessions, but instead merely requires that parties consult with fairness and sincerity, since meet and discuss sessions are not intended to provide forum for negotiating, compromising, or amending existing collective bargaining agreement, but rather exist as means for promoting orderly and constructive relationship between contractual parties as to institutional policy matters affecting conditions of employment.

—Meet and discuss sessions—Good faith requirement—Totality of evidence — State university — Pennsylvania Act ▶ 100.02 ▶ 54.500

State university did not violate good faith requirement implicit in Pennsylvania Employee Relations Act (SLL 48:221) during course of "meet and discuss" sessions with union concerning proposed reallocation of faculty, since university satisfied requisite standard of fairness and sincerity, and in fact went beyond what was required, it appearing that (1) university participated in numerous meet and discuss sessions with union representatives, (2) university offered opportunity for union to have representative present at administrative budget meetings, and (3) university altered proposed budget so as to include funds for faculty sabbatical replacements in accordance with union's primary objective.

Appeal from Pennsylvania Labor Relations Board. Affirmed.

Before BOWMAN, President Judge, and KRAMER, WILKINSON, Jr., MENCER, ROGERS, and BLATT, Judges.

Full Text of Opinion

KRAMER, Judge:—This is an appeal by the Association of Pennsylvania State College and University Faculties/Pennsylvania Association of Higher Education (APSCUF/PAHE) from a final order of the Pennsylvania Labor Relations Board (PLRB) [1] dated July 11, 1975, which affirmed a nisi order of dismissal in which the PLRB concluded that the Commonwealth of Pennsylvania, Indiana University of Pennsylvania, was not guilty of an unfair labor practice. The sole issue involves the legal question of whether a public employer is required to "meet and discuss" in *good faith* under the provisions of Section 702 of the Public Employe Relations Act, Act of July 23, 1970, P.L. 563, (Act No. 195), 43 P.S. § 1101.702 (PERA). We will affirm the dismissal of the charges by the PLRB.

APSCUF does not challenge any of the findings of fact of the PLRB, which disclose the following pertinent information. APSCUF is an "employe organization" or union under the provisions of PERA and recognized as the exclusive bargaining representative for all faculty members employed by the Commonwealth in its institutions of higher learning, including Indiana University of Pennsylvania. APSCUF and the Commonwealth entered into a collective bargaining agreement on September 5, 1972, to be effective November 2, 1971, through August 31, 1974. The agreement contained the following provision:

"The President or his designee shall meet monthly with a committee appointed by APSCUF/PAHE for the purpose of discussing matters of educational policy and development as well as matters related to the implementation of this Agreement."

At Indiana University both APSCUF and the University selected teams to represent their respective positions for "meet and discuss" purposes. During 1973, the University experienced a budgetary crisis in that its anticipated income was more than a million dollars less than its anticipated expenses and, therefore, at a February 23, 1973, meet and discuss session, it was disclosed by the University's team that a University Committee was studying reallocation of the faculty after which it would make a report and recommendations on certain subjects including one pertinent to this decision, i.e., sabbatical replacements. Under the previous University policy when a teacher left his or her post on a sabbatical leave another individual with similar qualifications was hired or transferred to teach the same courses in the same department.

There followed several meet and discuss sessions of the two groups and, although it is quite clear that APSCUF presented some suggestions on budget cutting and made inquiries about the subject of sabbatical leave, the budget committee of the University (on which the President of APSCUF had placed a nonvoting observer) recommended a freeze on sabbatical replacements. At the April 17, 1973, meet and discuss session, APSCUF was informed officially of the budget committee's recommendation. Additional meet and discuss sessions were held at which the subject of sabbatical replacements was discussed. Eventually the budget committee's report was submitted to the President of the University, recommending that there be no sabbatical replacements. At this time the budget of the University had not been completed in final form. The record indicates that the final budget made provisions for sabbatical replacements.

This proceeding was commenced on May 8, 1973, when APSCUF filed an unfair practices charge with the PLRB alleging that the Commonwealth (Indiana University) had violated Section 1201(a)(9) of PERA, 43 P.S. § 1101.1201(a)(9), which reads:

"(a) Public employers, their agents or representatives are prohibited from:

* * *

"(9) Refusing to comply with the requirements of 'meet and discuss'."

APSCUF contends that the University's meet and discuss team did not meet and discuss "in good faith" because of an implied promise to meet with the APSCUF team before a final resolution was made on the recommendations to the President of the University on the subject (among others) of the sabbatical replacements. APSCUF further contends that it was never consulted prior to the formulation of the decision by the University's team.

Since none of the factual findings of the PLRB are in dispute, we must review only the legal conclusions which the PLRB reached, based on those findings. Albert Einstein Medical Center v. Pennsylvania Labor Relations Board, 17 Pa. Commonwealth Ct. 91, 330 A.2d 264, 88 LRRM 2280 (1975).

Three additional sections of PERA are involved which read as follows:

Section 701. "*Collective bargaining* is the performance of the mutual obligation of the public employer and the representative of the public employes 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 but such obligation does not compel either party to agree to a proposal or require the making of a concession." 43 P.S. § 1101.701. (Emphasis added.)

Section 702. "Public employers shall *not* be required to *bargain* over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required *to meet and discuss* on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives." 43 P.S. § 1101.702. (Emphasis added.)

Section 301. "'*Meet and discuss*' means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised." 43 P.S. § 1101.301(17). (Emphasis added.)

A reading of the briefs provides the interesting revelation that APSCUF and the PLRB are in agreement on almost everything except the result reached by the PLRB. The parties agree on all of the following matters. (1) They are in agreement on the facts. (2) They are in agreement that "good faith collective bargaining" is a phrase of art in labor law. (3) They are in agreement that the term "good faith" is specifically used in Section 701 (collective bargaining) and is not specifically used in Sections 702 or 301(17). (4) They agree that good faith in collective bargaining is.

[1] By order dated December 18, 1975, the petition of the Bureau of Labor Relations, Intervening Appellee, to withdraw was granted and the Bureau was deleted as a party in this appeal.

generally satisfied by a bona fide attempt of one party to reach agreement with the other party. (5) They agree that the meet and discuss process seeks different goals than those sought under collective bargaining. (6) They agree that the parties (to meet and discuss sessions) may not discharge their statutory obligations in bad faith. (7) They agree that the negotiation of an agreement is not one of the purposes of the meet and discuss session, although that could be a fortunate result. (8) They agree that a meet and discuss session can be a problem-solving process, as well as a problem airing process. They agree that one of the purposes of a meet and discuss session is to give the parties to a collective bargaining agreement an opportunity to resolve problems, questions and misunderstandings which occur during the life of an agreement. (10) They agree that nothing arising out of a meet and discuss session is necessarily binding upon the employer. (11) They agree that only the employes may request a meet and discuss session. (12) They agree that no affirmative action on the part of the employer may be required as a result of a meet and discuss session. (13) Finally, they agree that a collective bargaining session and a meet and discuss session are mutually exclusive. We cannot resist the temptation to place our imprimatur of approval on the foregoing enumerated expressions of harmonious agreement.

However, the parties disagree on the application of these agreed principles to the uncontested facts of this case. From a reading of its brief and from argument, APSCUF appears to seek from this Court an academic dissertation on semantics. APSCUF insists over and over again that the public employer under PERA must "meet and discuss in good faith". The PLRB argues that although the parties may not meet and discuss in bad faith, APSCUF is erroneously attempting to apply the principles of "collective bargaining good faith" to meet and discuss sessions. We agree with the PLRB. As noted above, collective bargaining sessions and meet and discuss sessions were intended by the Legislature for two different purposes. The former is intended for the purpose of arriving at a collective bargaining agreement and the latter merely provides a forum for a dialogue between the parties after an agreement has been consummated. The meet and discuss sessions exist as a device to permit input or recommendations from the employes on policy matters affecting wages, hours and terms and conditions of employment so as to assist the public employer in ultimately making its discretionary resolution or disposition of the issues in question. As already noted, we agree that the parties cannot meet and discuss in *bad* faith, but that does not mean that "good faith", in the sense that the term applies to collective bargaining, should be required in meet and discuss sessions. In other words, meet and discuss sessions were not intended by the Legislature to provide a forum for negotiating, compromising or amending the existing collective bargaining agreement, but rather as a means for solving labor problems between public employers and their employes under their agreement and as a means to promote an orderly and constructive relationship between the parties.

APSCUF would have us, through this opinion, set forth the parameters within which the parties must meet and discuss. This we cannot do, because each case must be decided upon its individual facts. If the evidence proves that a public employer has met and discussed in bad faith, has reached its conclusion on the issues before the meet and discuss-session, refuses to attend a meet and discuss session, refuses to listen to the employes, or fails to provide an opportunity for the employes to persuade, then we would have little difficulty in concluding that an unfair practice has been committed under Section 1201(a)(9) of PERA, the burden of proving bad faith is placed upon the employes' labor representative, which filed the charge of unfair practices under the section of PERA. St. Joseph Hospital v. Pennsylvania Labor Relations Board, 16 Pa. Commonwealth Ct. 533, 330 A.2d 561, 88 LRRM 2298 (1974). We have carefully reviewed this entire record and conclude that the legal conclusions of the PLRB were proper. Although we disagree with the flat statement found in the final order that the requirement of good faith on the part of the employer in a meet and discuss session is "absurd", we assume that that unfortunate expression was a slip of the pen, because we agree otherwise with the PLRB's analysis of the law.

The parties to a meet and discuss session must not be guilty of bad faith, and this implies good faith insofar as it pertains to fairness and sincerity, but it does not imply good faith as that term is used as a phrase of art in collective bargaining.

The officials of the University not only met the standards mentioned above for a meet and discuss session, they went beyond what was required. The University went to great lengths to provide meet and discuss sessions more often than was required by the collective bargaining agreement. A representative chosen by the president of the union was invited to sit in on all of the administration's budget committee meetings as a non-voting observer, which provided the union with vital information which could be used by the union in its meet and discuss sessions. If any further proof was necessary that the University carried out the legislative intent regarding meet and discuss sessions, the record proves beyond a shadow of a doubt that after the budget committee made its recommendations contrary to the desires of the union's meet and discuss team, the administration of the University changed its proposed budget and deviated from the budget committee recommendation so as to include the sabbatical replacements about which the union team had been primarily concerned. If ever there was proof of the fulfillment of the legislative intent, the record in this case provides it.

Order

AND NOW, this 19th day of April, 1976, the order of the Pennsylvania Labor Relations Board in the above-captioned matter, dated July 11, 1975, is affirmed.

NLRB Procedures and Practices With Reference to the Rodda Act

By Steven J. Andelson, a labor attorney with the law firm of Paterson & Taggart, Palos Verdes Estates, California

When comparing the language of the National Labor Relations Act with various state statutes dealing with collective bargaining and unfair labor practices, it becomes apparent that the National Labor Relations Act (NLRA) and the decisions rendered by the National Labor Relations Board (NLRB) interpreting the Act have had a significant impact on the formulation and effectuation of public sector statutes. NLRB decisions are frequently cited in legal briefs and memoranda by employers and unions in public sector disputes involving unit determinations and unfair labor practices. This is true despite the fact that these decisions are not legally binding on the parties.

Perhaps, more importantly, various state courts and public employee relations boards throughout the United States have specifically sanctioned the application of NLRB precedent in construing language under their state's public sector labor statute. For example, we are all familiar with the 1974 case – *Firefighters Union Local 1186 vs. City of Vallejo*, 12 Cal. 3d 608, 116 Cal. Rptr. 507, in which the California Supreme Court specifically held that the NLRA and cases interpreting the Act may properly be referred to in interpreting similar language in public sector labor statutes. In this connection, I might add that the recently enacted California Agricultural Labor Relations Act expressly provides in Section 1148 that the Agricultural Labor Board follow applicable precedents of the NLRA.

I think without question that this strong influence exerted by the NLRA on public sector labor relations arises because the Act has been in effect for over four decades which of course is a long time in relation to most comparable public sector labor statutes. During this time, the Board has rendered thousands of decisions interpreting the Act which provide an historical basis and source of reference for resolving analogous issues arising in the public sector.

In this article, I would like to review briefly NLRB procedures and regulations and some issues and examples pertaining to unfair labor practices and certification procedures with reference to the Educational Employment Relations Act (Rodda Act).

Unfair Labor Practice Procedures

To begin, I will outline various NLRB procedures and issues in unfair labor practice cases. The statutory method for investigating unfair labor practices under the NLRA is set forth in Sections 10 and 11 of the Act. These provisions are supplemented by various sections of the Board's rules and regulations and statements of procedure. (Rules & Regulations §§ 102.9–102.59; Statements of Procedure §§ 101.2–101.6.)

Like Sections 10 and 11 of the NLRA, Article 2 of the Rodda Act provides a method for investigating unfair labor practices (called unfair practices) which are supplemented by various

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sections of EERB's procedures recently issued in June 1976 (to be incorporated into the California Administrative Code, Part III, Title 8, Chapters 1.5 and 10.) These procedures contain some significant deviations from private sector rules relating to the investigation and prosecution of unfair labor practices. For example, unlike the NLRA, these procedures limit investigatory involvement by the EERB and require the charging party (the party filing the charge) to prosecute his own case, although under Section 3500.6 an EERB agent may be assigned to assist a charging party in drafting an unfair practice charter or gathering evidence if he is "...unable to retain counsel or demonstrates extenuating circumstances as determined by the [EERB]."

An unfair labor practice case in the private sector is initiated by the filing of a charge with the appropriate Regional Office of the NLRB. There are three Regional Offices in California -- one located in San Francisco and two in Los Angeles. Each Region is responsible for handling NLRB cases arising within a designated geographical area. The charge that is filed with a Regional Office must allege at least in general terms a violation of the Act on the part of an employer, a labor organization, or their agents, such as a supervisor or union business representative. The events constituting the alleged violation must have occurred within six months prior to the filing and service of the charge, otherwise it will be administratively dismissed by the Region. (National Labor Relations Act § 10 [b].) This rule is analogous to the "statute of limitations," a concept familiar in civil and criminal law.

Significantly, the Rodda Act also has the same procedural restriction under Section 3541.5(a). However, this section further requires as a prerequisite to filing a charge that the charging party exhaust available and applicable grievance procedures in the collective bargaining agreement between the parties. The latter requirement is not expressly provided for under the NLRA.

Interestingly enough, the NLRB since 1971, following its well-known *Collyer Insulated Wire* decision, 192 NLRB No. 150 77 LRRM 1931, and subsequent related cases, has increasingly advocated deference to private arbitration procedures in unfair labor practice cases where the unfair practice involves basically a question of contract interpretation. Unlike the NLRA, the Rodda Act attempts to avoid this case law approach to deference by mandating the exhaustion of applicable grievance procedures before an unfair labor practice charge may be filed.

Under the NLRA, once a charge is properly filed, however, it is investigated by a Board agent acting out of a Regional Office on behalf of the NLRB General Counsel in Washington, D.C. The burden of investigating the charge is on the agent, although the charging party is expected to cooperate by furnishing supportive evidence and witnesses to substantiate the charges.

If the Region determines that the unfair labor practice charge is without merit, it will formally refuse to issue a complaint and dismiss the charge. This dismissal may be appealed to the General Counsel in Washington, D.C. However, if the General Counsel upholds the Region's dismissal, the charging party has no right to review by the NLRB or a court, since the NLRA provides that the General Counsel's authority over issuance of a complaint is final and absolute. Therefore, the dismissal of a charge cannot be appealed further. (National Labor Relations Act S 3[d]; see also Rules and Regulations § 102.19.)

If, on the other hand, the Region determines that the charge is meritorious, absent settlement (Statements of Procedure § 101.7), a formal complaint is issued and a hearing is held before an administrative law judge. At this hearing the case is prosecuted by an attorney from the Regional Office acting on behalf of the NLRB General Counsel. (Rules & Regulations § 102.34.) The Board attorney has the burden of proving by a preponderence of the evidence – in other

words, that it is more probable than not – that the employer (or union, whoever is the respondent) has engaged in or is engaging in an unfair labor practice. After the hearing the administrative law judge issues a decision which includes a complete statement of the case, findings of fact, conclusions of law, and recommended order which may be appealed by the aggrieved party to the board (Id. at § 102.46) and ultimately to a federal appellate court of competent jurisdiction. (National Labor Relations Act § 10 [f].)

The recommended order contained in the administrative law judge's decision is entirely remedial since the National Labor Relations Act is not a criminal statute. The order is intended to prevent and remedy unfair labor practices and not to punish the party responsible for committing the acts by, for example, imposing punative fines. To accomplish these objectives, the NLRA authorizes the Board to issue cease and desist orders and also to take such affirmative action as will effectuate the policies of the Act. (Id. at § 10[c].) This language interestingly enough is almost identical to language contained in Section 3541.5(c) of the Rodda Act.

In practice the NLRB's order usually requires that the employer (or union) post a notice at its premises in a conspicuous place for 60 days notifying employees that it will cease and desist from engaging in the unfair labor practices and also informing employees of any affirmative action being undertaken to remedy the violations. For example, in the case of a discriminatory employee discharge affirmative action may require that the employer offer the employee immediate and full reinstatement to his former position or a substantially equivalent position without prejudice to his seniority and other rights and with full back pay, including interest. Or in the case of a refusal to bargain, affirmative action may require that the employer again bargain with the union and sign an agreement when and if an understanding is reached.

Three sections of the NLRA which are commonly violated by an *employer* are Sections 8(a)(1), (3),and (5). These sections are largely analogous to Sections 3543.5(a) and (c) under the Rodda Act. Because of space restraints, I will confine myself to *employer* conduct although it should be noted that both the NLRA and the Rodda Act have analogous provisions pertaining to employee organization conduct.

Unfair Labor Practices: Interference, Restraint, Coercion

Section 8(a)(1) under the NLRA and Section 3543.5(a) under the Rodda Act make it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights to form, join, or participate in an employee organization or to refrain from these activities. This particular statutory prohibition may factually arise where an employer:

1. threatens employees with loss of jobs or benefits if the employees join or vote for an employee organization;

2. promises benefits to employees if they refrain or agree to refrain from voting for an employee organization;

3. questions present or prospective employees concerning their organizational activities, membership, sympathies, or knowledge of organizational affairs under circumstances that are coercive in nature;

4. spies or appears to spy on the organizational activities of employees.

Significantly in 1947, Congress, with the Taft-Hartley Amendment to the National Labor Relations Act, attempted to balance the statutory prohibition against employer interference with employees in the exercise of their protected rights against the right of an employer to engage in free speech under the 1st Amendment to the Constitution by including Section 8(c), the so-called free speech provision. Section 8(c) provides in part that no expresssion of views "...shall constitute or be evidence of an unfair labor practice if such expression contains no threat of reprisal or promise of benefit."

Since the passage of this section, the NLRB has engaged in a continuing effort to define and reconcile these competing interests. NLRB decisions during the Eisenhower administration tended to focus on the contested statement itself in isolation from other comments or conduct of the employer. Since that time, the Board has placed greater emphasis on surrounding conduct so that the existence of a violation turns not on the express words used but on their meaning in the context in which the words were spoken. Generally speaking, if we are to define a rule in this area, an employer may lawfully express his opposition to an employee organization or to employee organizations in general and may argue against a strike or other protected activity, provided he does not suggest directly or impliedly that employees will be penalized for refusing to adopt his view.

Interestingly enough, the Rodda Act does not contain an analogous free speech provision. Section 3543.5(b) makes it an unfair practice for an employer to exhibit preference between organizations. Conceivably, the California legislature in enacting this bill felt that the 1st Amendment right of free speech adequately covered this area and therefore the Educational Employment Relations Board in interpreting the Rodda Act will merely adopt private sector precedent relating to the application of the free speech privilege.

In addition to employer interference, both the National Labor Relations Act under Section 8(a) (3) and the Rodda Act under Section 3543.5(a) make it an unfair labor practice for an employer to discriminate against an employee because of his organizational activities. This particular statutory prohibition may factually arise where:

1. an employee on the organization's negotiating team or a building steward or an active and open employee organization supporter is given a less desirable work assignment or location because of his involvement in organizational activities;

2. the president of the local employee organization receives an unsatisfactory evaluation because of his involvement in organizational activities.

It is important to note that in these examples the NLRB attorney has the burden of proving by a preponderence of the evidence -- in other words, that it is more probable than not -- that the conduct of the employer was due to the employee's organizational activities. In sustaining this burden, the NLRB attorney generally must show that:

1. the employer's action detrimentally affected the terms and conditions of the employee's employment;

2. that the employer had knowledge of the employee's organizational actitivies;

3. and that the conduct by the employer was discriminatorily motivated as a result (i.e., because) of the employee's organizational activities.

In connection with this last element, it is important to keep in mind that the NLRB's attorney need only establish that the employer's conduct was at least *in part* discriminatorily motivated even though the employer's reasons for effecting a change in the employee's terms and conditions of employment may have been combined with purely economic or other neutral justifications. Thus, for example, it would be immaterial that an employee was transferred to a different work or shift assignment for economic reasons if it can be shown that the decision to transfer the employee was based, in part, *however slight*, on the employee's organizational activities. In these circumstances the employer must establish *independent* justification for the transfer in order to prevail. In other words, the justification must be totally independent and separable from any employee organization considerations.

Unfair Labor Practices: Refusal to Negotiate in Good Faith

Both the National Labor Relations Act under Section 8(a) (5) and the Rodda Act under Section 3543.5(c) also make it an unfair labor practice for an employer to fail or refuse to negotiate in good faith with the exclusive employee organization representative. The concept of good faith bargaining has been applied in a wide variety of factual situations in the private sector. It has been interpreted by the National Labor Relations Board to include:

> First, a duty by the employer to supply information to the employee organization which is relevant and necessary to allow the organization to effectively negotiate as well as to police the collective bargaining contract during its term. (*J.I. Case Co. v. NLRB*, 253 Fed. 2d 149 [C.A. 7, 1958]; *Weber Veneer & Plywood Co.*, 101 NLRB 1054 [1966]; *B.F. Goodrich Co.*, 89 NLRB 1151 [1950]; *General Controls Co.*, 88 NLRB 1341 [1950].)
>
> Second, a duty by the employer to refrain from making unilateral changes in existing wages, hours, and other terms and conditions of employment without first notifying and affording the employee organization an opportunity to negotiate over the changes made. (See generally, *NLRB v. Katz*, 369 U.S. 736 [1962].)
>
> Third, a duty by the employer to refrain from bypassing the employee organization representative and dealing directly with employees with respect to wages, hours, and other terms and conditions of employment, and thus attempting to undermine the union's status as the exclusive collective bargaining representative of the employees. (*Cal-Pacific Poultry, Inc.*, 163 NLRB 716 [1967]; *General Electric*, 150 NLRB 192 [1964].)
>
> And fourth, a duty by the employer to bargain with the subjective intent of reaching an agreement. This is the so-called prohibition against surface bargaining. (See generally, *A.H. Belo Corp.*, 170 NLRB 175 [1968]; *MacMillan Ring-Free Oil Co.*, 160 NLRB 877 [1966].)

Surface bargaining is one of the most difficult unfair labor practices to prove in the private sector. While the NLRA under Section 8(d) expressly provides that neither party is compelled to agree to a proposal or make concessions, the NLRB and the courts have historically suggested that the willingness to compromise, i.e., to make concessions, is an important indicia of good faith. This concept was expressed in an important case called *Reed & Prince*, 205 Fed. 2d 131, enf'd. 28 LRRM 1608, 32 LRRM 2225, which was decided by the Board in 1953. There it

was held that while the Board cannot force an employer to make a concession on any specific issue or to adopt any particular position, the employer is obligated to make some reasonable effort in some direction to resolve his differences with the union, if Section 8(a)(5) is to be read as imposing any substantial obligation at all.

Perhaps significantly, the Rodda Act does not include language similar to Section 8(d). Whether the Educational Employment Relations Board will require a greater concession on the part of the employer or any concession as an indicia of good faith bargaining will be determined as cases are decided.

Certification Procedures

At this point, I will discuss various procedures and some issues in representation cases involving certification of an employee organization under the NLRA. The process under which an employee organization may be certified by the NLRB as the exclusive collective bargaining representative of employees in an appropriate unit is outlined in Section 9(c) of the NLRA. This statutory provision is amplified in various sections of the Board's rules and regulations (Rules & Regulations §§ 102.60-102.82) and statements of procedure (Statements of Procedure §§ 101.17-101.25).

Like Section 9 (c) of the NLRA, Articles 5 and 6 of the Rodda Act provide a method by which an employee organization seeking exclusivity may be certified by the EERB. These articles are supplemented by various sections of the EERB's procedures (to be incorporated into the California Administrative Code, Part III, Title 8, Chapters 1 through 7).These procedures contain some significant deviations from private sector rules, particularly in the initial stages of the representation process. For example, these procedures specifically limit initial direct EERB intervention for a period of time in order to afford the parties an opportunity to resolve questions concerning representation and achieve voluntary recognition.

The certification process under the NLRA is set in motion by the filing of a representation petition with an appropriate Regional Office of the NLRB, commonly by a group of employees or an employee organization. Unlike most public sector statutes, including the Rodda Act, which require a majority showing of interest, under the NLRA the petition need only be supported by a 30 per cent showing of interest of employees in a proposed bargaining unit who wish to be represented by an employee organization as their exclusive bargaining representative. (Id. at § 101.18[a].) Usually the 30 per cent showing of interest is evidenced by authorization cards signed by the employees.

After this petition is filed, the NLRA requires that the NLRB investigate the petition in order to determine whether or not there is reasonable cause to believe that a question concerning representation exists. Generally speaking, this requires an investigation by the Regional Office to determine:

First, whether the Board has jurisdiction over the employer;

Second, whether there are statutory or policy reasons for precluding an election such as filing restrictions or existing contract bars; and

Third, whether the bargaining unit sought is appropriate.

These issues may be resolved formally by stipulation and consent of the parties to an election or may be challenged by the parties at a formal hearing before an officer designated by the regional director. The hearing is technically considered nonadversary and an extension of the region's responsibility to investigate the existence of a question concerning representation. The issues at this hearing generally are decided by the regional director who will ultimately either order the petition dismissed or direct an election. If an election is directed, the voted ballots may be challenged and objections may be filed to the election. The end result is marked by certification of the winning employee organization as exclusive bargaining representative or by certification of the results if no employee organization wins.

Significantly, an employer with limited exceptions has no right under the NLRA to appeal the certification of an exclusive bargaining representative beyond the NLRB in Washington, D.C., to the federal appellate courts since the U. S. Supreme Court has held, in *AFL v. NLRB* 308 U. S. 401 (1940) that an NLRB certification action is not a "final" order. As a result, an employer wishing to contest a certification may first refuse to bargain and then assert his position by way of defense in an unfair labor practice proceeding in order to eventually seek judicial review. This same indirect procedure for appeal is required under the Rodda Act.

Perhaps one of the more interesting aspects of Board election procedures involves objections to an election. In the private sector either party may file objections attacking the results of an election on the grounds that certain election procedures or conduct prevented the employees from exercising a free and uncoerced selection or rejection of a bargaining representative. The Board has held that conduct occurring at any time after the filing of a representation petition, whether engaged in by the employer, the union, Board agents, or even outsiders, will invalidate an election where such conduct creates an atmosphere which renders a free choice by employees at the polls improbable. This is true even though the conduct itself may not be sufficiently serious to constitute an unfair labor practice.

This doctrine was recognized by the Board in 1948 in the landmark *General Shoe Corporation*, 77 NLRB No. 18 (1948), 21 LRRM 1337, case. There the Board held: ". . . [T]he criteria applied . . . in a representation proceeding . . . need not necessarily be identical to those employed in testing whether an unfair labor practice was committed. . . . In election proceedings, it is the [NLRB's] function to provide a laboratory in which an experiment may be conducted under conditions as nearly ideal as possible to determine the uninhibited desires of the employees. . . ." Under this concept fault is not at issue. The test is whether or not conduct existed which destroyed the so-called "laboratory conditions" necessary for an election despite the fact that this same conduct would not constitute an unfair labor practice.

The NLRB has decided a series of cases dealing with this concept which involve a wide variety of fact situations. For example, in 1968 in a case called *Michem, Inc.*, 170 NLRB No. 46, the Board set aside the results of an election based on objections filed by an employer because a union representative was present in the polling area during the election and carried on a conversation for several minutes with employees waiting to vote, even though the conversation between the union representative and the employees concerned the weather and other topics entirely unrelated to the election. In another case, the Board invalidated an election because of widespread rumors initiated by individual employees and outsiders directed at influencing the employees' vote even though the conduct itself could not be attributed to either the employer or the union. (See, for example, *Universal Mfg. Corp.*, 156 NLRB 1459 [1966]; *P.D. Gwaltney Jr. & Co.*, 74 NLRB 371 [1947].) In other words, no agency relationship existed between the outsider and the parties to the election.

In both of these examples, the Board based its decision on the ground that the conduct involved affected or was likely to affect the laboratory conditions necessary for an election and thus negate a rational, uncoerced choice by employees at the polls, and this was so despite the fact that the conduct itself was insufficient to constitute an unfair labor practice.

The procedures issued by EERB attempt to skirt this wide-open area of objectionable conduct by specifically narrowing the grounds for which objections may be filed to conduct that would otherwise constitute an unfair practice as defined in the Rodda Act or to serious irregularities in the conduct of the election such as bribery of a voter or falsification of voter eligibility lists.

Conclusion

In conclusion, I have attempted to briefly review various procedures and examples concerning unfair labor practices and representation cases under the NLRA. A general knowledge of these areas will assist practitioners in understanding areas of procedure and substantive law which may, and in many instances are, applicable to schools under the Rodda Act. In my view it would be a mistake for anyone in the public sector involved in labor relations to completely ignore the extensive experience of the private sector in dealing with matters pertaining to unfair labor practices and representation cases. No doubt many of the substantive issues which will arise down the road involving the interpretation of the Rodda Act in these areas will be resolved in signficant part by reference to private sector precedent.

D

TAB D

A GUIDE FOR EERB HEARINGS

(A Training Model)

Publication of this Guide is intended as a training model only, and does not represent the official hearing procedures which may be adopted by the Educational Employment Relations Board, except where the Statutory or Administrative Rules and Regulations are cited. We hope, however, that it will provide some direction for school employee representatives and employers involved in EERB hearings.

TABLE OF CONTENTS

PART I. HEARING OFFICER'S CHECKLIST

A. Preparation prior to hearing (Staff Hearing Officers)

1. Procure case files.

2. Check date, time and place of hearing. Verify arrangements for hearing room.

3. Review case file to identify issues and legal and procedural problems. Perform necessary legal research.

4. (Optional) Contact parties to determine if a conference call or informal prehearing conference would be productive in developing stipulations and otherwise shortening the hearing.

5. If a conference call or informal conference is held, develop stipulations concerning:

   (a) Jurisdictional facts.
   (b) The unit or parts of unit not in dispute.
   (c) Procedural history of case.
   (d) Documentary evidence.
   (e) The issues in dispute.
   (f) Other relevant matters.

6. If a party requests a subpoena, inquire into relevancy and necessity of subpoened testimony or evidence.

B. Materials needed at hearing (All Hearing Officers)

1. Specific:

   a. Case file; including the respective positions of the parties in order to frame, simplify, and clarify the issues involved. However, any such material shall not be deemed a part of the record and any party wishing to rely upon them as exhibits shall make an appropriate submission at the hearing. The hearing officer shall take judicial notice of materials on file.

   b. Formal papers, ready for introduction as exhibits.

      1. Petition and amended Petition(s)

         (a) Charge and amended Charge(s)

         (b) Respondent's answer

C. Parol evidence

Parol evidence is generally not admissible to vary, interpret, or alter the items of an integrated signed written contract. The parol evidence rule may become significant in issues dealing with the scope or validity of a contract to bar the filing of a timely petition for certification. In such cases the contract is presumed to be valid and parol evidence is not admissible to explain or interpret the terms of the contract. Prior oral understandings on the terms of a contract are presumed to be merged in the final written agreement of the parties.

D. Privileges

The Hearing Officer shall give effect to the rules of privilege recognized by law.

1. Self-incrimination

Every witness has a right to refuse to disclose in an administrative proceeding any matter that will incriminate him or expose him to a penalty. The Hearing Officer may, however, exclude all of a witness's testimony if he refuses to answer a proper question as directed by the Hearing Officer.

2. Lawyer-client privilege

Communications between a lawyer and his client in the course of that relationship are privileged and a client has a right to refuse to disclose any communication.

3. Marital privilege

No person shall be compelled to disclose any communication made in confidence between such person and his or her spouse.

4. Priest-penitent privilege

A clergyman, minister, or other person shall not be compelled to disclose a confession or confidential communication made to him.

5. Other privileges

Other privileges recognized in California are religious belief, political vote, trade secret, and official information of the state if disclosure is forbidden by or pursuant to any Act or Executive Order of this state.

PART II. SUMMARY OF STEPS FOR CONDUCTING HEARING

A. Pre-opening procedure (Off the Record) the hearing officer "should":*

1. Complete the appearance sheet. Correct names and addresses must be shown. Designate name of representative or counsel on whom service of all documents shall be made.

2. Ascertain issues and points of agreement.

3. Explore stipulation and settlement possibilities. If agreement is reached, require parties to put complete agreement regarding unit description and election in writing. If election will be required, attempt to develop consent election agreement.

4. If hearing is to open, seek to get stipulation concerning the following:

   a. Employee organization status (Section 3540.1 (d)). If no stipulation is obtained, testimony of someone, probably a union representative, is required to establish that the organization "exists in whole or in part" for the purpose of representing employees with respect to their wages, hours, and working conditions. For questions for developing the record concerning status as labor organization, see Section II, C, infra.

   b. Unit or parts of unit agreed upon by the parties. Determine the disputed and agreed upon inclusions and exclusions off the record. Explore possibilities of a stipulation covering the scope of the unit, as well as any agreement upon the composition. If attained, stipulations should be put on record, and testimony sufficient to warrant or justify the stipulations should be taken in order to establish appropriateness of unit under relevant Board criteria.

   c. Issues remaining in dispute - Hearing Officers may either define the issues with the parties and discuss necessary evidence before the hearing begins or discuss them "on" or "off" the record as the issues arise during the course of the hearing.

*In this model the use of the word "should" indicates our concept of the necessary procedures and does not represent the official policy adopted by EERB.

d. History of bargaining. Explore off-the-record possibilities of a stipulation regarding any history of collective bargaining involving the unit in question, other organizational attempts, and the identity of any union involved. If attained, stipulation should be put on record. If there has been no history of bargaining, the record should reflect that fact. If a stipulation is not received, history should be developed through witnesses, or if none are available through statements of counsel.

5. Show the parties the case files and advise them official notice will be taken on the documents therein.

6. Make certain that a summary of pertinent off-the-record discussions are inserted in the record.

7. Ascertain whether the parties will make any motions at the hearing and get stipulations and procedural matters clarified.

8. Seek agreement on the order of the parties' presentation. In representational cases ordinarily the employer will be first because it has access to records regarding job classifications, etc. In unfair labor practice cases the charging party has burden of proof, and would be the first to proceed.

B. Open Hearing - Read opening statement in record:

Opening Statement

To open the formal phase of the hearing, the hearing officer should read (or paraphrase) into the record the following statement:

The hearing will now be in order.

This is a formal hearing of the Educational Employment Relations Board in the matter of _____, Case No. _____.
(name of school district)

The hearing officer appearing for the E.E.R.B. is _____.

Will the representatives of the parties please state their appearances for the record, and in doing so please state the full and exact name of the organization or school district represented for the Employer? . . . For the organization which presented the initial request for recognition? . . . For the intervenor (first, second, third, etc.) . . . Are there any other appearances? . . . Let the record show that there was no response.

All witnesses at this hearing will be examined under oath. The technical rules of evidence will not be controlling; however, the hearing officer will have the authority to rule on objections to the introduction of testimony or documentary evidence. The hearing will be tape-recorded and a transcript will be made from the recording which the parties may obtain at cost. Parties will have the opportunity to make legal arguments orally on the record and at the discretion of the hearing officer, posthearing briefs may be filed. We will discuss the matter of the filing of briefs at the conclusion of the testimony. At the conclusion of this hearing, the record of the case will be submitted to the Board for decision, and the authority of the hearing officer to make rulings will end. (NOTE: This statement will obviously have to be adapted when the Board delegates to the hearing officer the authority to issue a preliminary decision.)

It is 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. In discharging this duty, it may become necessary for the hearing officer to ask questions, to call witnesses, and to explore matters not raised or only partially raised by the parties.

The case files of the Board contain the following documents... describe the documents in chronological order to show the proceedings of the case prior to hearing.

The hearing officer now proposes to take official notice of the documents contained in the case files. Is there an objection?

C. Introduce EERB exhibits into evidence

D. Intervention

Check Notice of Hearing which indicates intervenors. Rule upon all motions to intervene at hearing. For additional clarification see Sec. 33340 A.R.R.**

**A.R.R. means Administrative Rules and Regulations of EERB.

PART III. MOTIONS

A. Adjournments or Continuances

The Hearing Officer at his discretion may continue the hearing from day to day, or adjourn to a later date or to a different place. In so doing; he should make appropriate announcement on the record.

If at any point during hearing the Hearing Officer is convinced that a question concerning representation does not exist, he should adjourn the hearing and present the facts to the Regional Director.

Motions of the parties for postponements may be granted only when essential to perfect the record necessary for the Board to make its decision.

Adjournments or postponements should be to a certain day when it is clear the hearing will have to continue.

B. Amendment or filing of petition

1. Motion to amend petition.

   a. Obtain the parties' consent to the motion to amend, if possible.

   b. If permission to amend is not granted and if the amendment sought is substantial, e.g., material enlargement or change in scope of the unit, exercise the greatest care to see that the granting of the amendment and proceeding with the hearing will cause no prejudice to any interested persons or organizations.

   c. Consider:

      (1) Completeness of file and record.
      (2) Awareness by the parties of the new issue introduced.
      (3) Preparedness to meet the new issue.

   d. Obtain positions of the parties concerning the amendment, and, if opposed, the reasons therefor.

   e. Grant amendment and adjourn to certain day if:

      (1) Hearing Officer needs time to ascertain whether all persons or organizations interested in the new unit are before him and have adequate notice and opportunity for hearing, and

(2) There is appropriate interest showing in the new unit.

f. A petitioner may amend its unit any time before the close of the hearing in the form of an alternative request and will not be dismissed in the absence of prejudice to any party.

C. Withdrawal or dismissal of petition

1. Motion to withdraw before hearing.

a. Do not open hearing.

b. Reduce request to writing.

2. Motion to withdraw during hearing.

a. Make motion on record or in writing and introduce in evidence.

b. Close hearing.

3. Motion to withdraw during adjournment of hearing.

a. Get motion in writing.

b. Hearing need not be reopened.

4. Motion to dismiss made at hearing should be denied, except in an exceptional case the motion may be referred on the record to the Board for ruling at such time as the entire record is considered by the Board.

D. Sequestration of witnesses

The Hearing Officer should direct sequestration when requested to do so by any party.

E. Motions

Dispose of procedural requests and motions which shall be made part of the record of the proceeding, including motions referred by the Executive Director or General Counsel and motions to amend. Defer ruling of motions to dismiss for lack of jurisdiction for treatment in report after the compilation of a complete record.

1. Objections to Ruling on Motions. A party may object to the ruling on a motion by the board agent and request a ruling by the Board itself. The request shall be made in writing to the board agent and a copy shall be sent to the Board itself. The board agent may refuse the request or join in the request and thereby certify the matter to the Board itself. The board agent may join in the request only where the following apply: (33200 ARR)

   a. The issue involved is one of law;

   b. The issue involved is controlling in the case; and

   c. An immediate appeal will materially advance the resolution of the case.

2. Showing of interest

   a. If an employee organization makes a motion to challenge the proof of majority support or showing of interest of another employee organization, the motion should be denied on the record on two grounds: that pursuant to regulation 33270(b) such issues are administrative matters not to be litigated at a hearing, and that an employee organization has no right to examine the authorizations submitted by another organization and therefore lacks standing to raise the issue.

   b. If an employer attempts to raise the issue for the first time at a hearing, and the challenged organization is not attempting to claim a substantially larger unit at the hearing than claimed in the request or intervention submitted to the employer, the motion should be denied on the record on two grounds: regulation 33270(b), and waiver (where the employer decision does not explicitly raise the issue).

   c. If an employee organization attempts to claim a substantially larger unit at the hearing than claimed in the request or intervention filed with the employer, an employer motion to exclude evidence as to the larger unit on the ground that a showing of interest for such unit has not been made should, pending Board action to the contrary, be reserved for Board determination and the evidence received subject to the objection.

F. Read any agreed statement of facts and stipulations into the record. Get approval of parties to stipulations on record.

G. Brief statement into the record by parties regarding positions on disputed issues and on agreements.

Request parties to state their respective positions concerning any issue in the case or theory in support thereof.

H. Presentation of case by each party

1. The Hearing Officer may, in addition to the parties, inquire fully into the facts as they relate to the matter before him and call, examine, and cross-examine witnesses and introduce into the record documentary evidence.

2. The Hearing Officer may, during the presentation of any case, request parties to state their respective positions concerning any issue.

3. In Representation case Hearing Officer has obligation to develop a full record, but should not take over hearing.

I. Closing Hearing

1. Obtain on record the final position of the parties regarding unit contentions, inclusions or exclusions, or other issues raised during the hearing.

2. Rule on outstanding motions.

3. Provide parties opportunity for oral argument and/or make arrangements for the filing of briefs (including discussion of availability of transcript). See Section 33360 A.R.R.

4. Review notes to insure that all issues, evidence and positions are covered.

5. If the parties agree on procedures for the submission of further documentary evidence, the record may remain open for a specified period of time.

6. Make a formal statement closing the record (if appropriate).

J. Posthearing Procedures

1. Observe proper protocol with district personnel with regard to locking up of room and thanking them for use of room.

2. It is the responsibility of the Hearing Officer to see that all tapes and exhibits are given to the transcriber in an orderly fashion for preparation of the official record.

3. Prepare outline of issues raised at the hearing in formal report to the Board. (This is at least partially to identify issues for parties wishing to submit amicus briefs.)

PART IV. EVIDENTIARY PROBLEMS

A. Rules of evidence

1. The parties shall not be bound by rules of evidence whether statutory, common law, or adopted by the Rules of Court. All relevant evidence is admissible, except as otherwise provided. A Hearing Officer may in his discretion exclude any evidence or offer of proof if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The Hearing Officer shall give effect to the rules of privilege recognized by law. Every party shall have a right to present his cause by oral and documentary evidence to submit rebuttal evidence. Every party and the Hearing Officer shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

2. A Hearing Officer should inquire fully into all matters which are relevant and in issue and necessary to obtain a full and complete record upon which he, the Executive Director, and the Commission may discharge their functions.

3. A Hearing Officer should keep the record as short as is commensurate with its being complete by soliciting stipulations and by excluding irrelevant and non-probative evidence. He should achieve an uncluttered record. He should go off the record whenever possible, summarizing for the record any discussion or offer any stipulation agreed to.

4. When in doubt err in favor of taking the testimony.

B. Official notice

1. The Hearing Officer may take official notice of a record in a prior related proceeding provided opportunity is given to all parties to consent on the record to its inclusion in the record.

2. The Hearing Officer may take official notice without request of the parties of the decisional, statutory law, and rules of this state and the Board and of such specific facts and propositions of generalized knowledge as are universally known and cannot reasonably be the subject of dispute.

Notice of Representation Hearing or
Notice of Hearing on Charge Alleging
Violations of the Act

3. Service Sheet

4. Order Consolidating Cases and Service Sheet, where appropriate

5. Order Rescheduling Hearing and Service Sheet, where appropriate

6. Original and copy of "appearance sheet"

2. General:

a. The tape recorder and blank tapes.

b. Pens, pencils and writing pads.

c. Copy of the Rodda Act and the Board's Rules and Regulations.

d. Copy of the Guide for Hearing Officers in EERB Representation Proceedings.

e. Blank subpoenas, both for the production of persons and for the production of documents.

f. Blank appearance sheet forms.

g. Blank consent election forms.

PART V. EMPLOYEE STATUS

A. Managerial employees

1. Section 3540.1(g) of the Act defines management employee as:

> ..."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."

2. Relevant questions include the following:

   a. Duties and location of work.

   b. Supervision. How closely supervised?

   c. Rate of pay--hourly or salaried? Overtime provision?

   d. Compare employee benefits, use of facilities.

   e. Past bargaining history.

   f. Participation in formulation and effectuation of management policies.

   g. What decisions are required for the job? Are they matters of independent discretion or in line with established policy?

   h. What decisions require higher approval? No approval?

   i. Is independent judgment required? Examples.

   j. What do decisions affect? Whom do they affect?

   k. Is the individual in dispute recipient of knowledge concerning labor relations?

   l. Does he have access to knowledge, data, or records concerning labor relations? If so, for what purpose?

m. To whom does he report? Nature of such report?

n. Does he have authority to pledge the employer's credit? Extent?

o. Does he replace supervisors? When, frequency, authority?

p. Does he attend supervisory or managerial meetings? Frequency and extent of participation.

q. Responsibility for production or other schedules.

r. Recommendations regarding production changes, assignment of personnel, or the addition or reduction of personnel.

s. Quality control and inspection functions.

t. Responsibilities regarding coordination of plant activities

B. Confidential employees

1. Relevant questions include the following:

a. Duties.

b. What is the nature of the confidential material handled?

c. Does alleged confidential material relate to labor relations?

d. Does employee in question assist or act in a confidential capacity to a person who exercises managerial functions in labor relations?

e. What does his or her boss do? Does he or she handle the employer's labor relations with respect to employees of the entire plant, department, or other group?

f. Does employee in question have access to labor relations policy data respecting the plant, department, or other group?

g. Place of work, wages, rate of pay, past bargaining history, benefits, etc.

h. Confidential employees are limited to embrace only those employees who assist and act in a confidential manner to persons who formulate, determine, and effectuate management policies in the field of labor relations. The B.F. Goodrich Company, 115 NLRB 722 (1956). See Appendix.

C. Supervisors

1. Section 3540.1 of the Act states:

> "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.

2. Relevant questions include the following:

a. Describe the duties of the individual in question. What is his or her correct title?

b. For what is he or she held responsible by the employer? Describe in detail.

c. What are his or her powers and authority regarding hiring, firing, discipline, direction, promotion, transfer, layoff, recall, rewards, time off, reprimand?

d. Describe manner in which he or she was given such authority. Who conferred the power?

e. Does he or she have the authority to effectively recommend the foregoing actions?

f. Give examples of the exercise of such authority or recommendations.

g. What actions were taken by his or her superior regarding such exercise of recommendations? Examples.

h. Does he or she interview job applicants? Make recommendations? What is the effectiveness of his or her recommendations? Examples.

i. Does he or she transfer employees from one job to another? To another department? If so, on what occasions? Employees affected?

j. Who makes the decision to transfer employees? If the person in question makes the decision, what factors are involved?

k. To what extent are the working conditions and the wages of the transferred employee affected?

l. Does he or she have the authority to grant time off to employees? Has he or she exercised such authority? Give examples. Is his or her decision final or does he or she check with others?

m. If his or her duties require independent judgment, describe the nature of such judgment, when exercised, extent of review, and by whom.

n. If he or she handles grievances, describe methods used and extent of his or her handling.

o. Does he or she attend supervisory meetings? Regularly? If not, how frequently? What is the reason for his or her attendance? What is the extent of his or her participation?

p. To what extent are his or her actions regarding supervison reviewable by his or her supervisor?

q. Who does he or she report to? Who supervises the individual? What is the nature of the assignments received from his or her supervisor and the extent of his or her reports?

r. How many employees work under his or her supervision? What are their classifications?

s. To whom does he or she assign work? How does he or she make an assignment and what is the nature of such assignment?

t. Describe and give examples of the type of orders or instructions given?

u. Does he or she receive any benefits not granted to other employees? If so, describe.

v. Compare the percentage of his or her time spent in the direction or supervision of employees with the percentage of the time spent in actual manual labor or work.

w. Compare his or her duties with those of persons working immediately over and under the individual.

x. Compare with those of other employees and admitted supervisors the rate of pay, manner of pay, overtime, vacations, insurance, pensions, bonus, use of facilities, incentive plans, parking areas, type of clothing worn while working, use of timeclock, restrooms, cafeteria, payment for time lost.

y. Describe any special privileges or compensation given by virtue of his or her position.

z. Do employees work permanently or temporarily under the individual in question? If temporarily, describe the circumstances surrounding their assignment to work under the person, including the frequency, type of work performed, duration, and the extent of his or her authority and responsibility.

aa. Is he or she designated on the payroll as a supervisor?

bb. Does he or she consider himself or herself a supervisor?

cc. Is he or she regarded as a supervisor by other employees and admitted supervisors?

dd. Does he or she have the responsibility for a shift or particular operation?

ee. Is he or she the only person with apparent authority present on a shift or other operation? If so, does he or she have authority to make final decisions or must it be checked with other officials? If he or she makes recommendations, what further action is taken and by whom? Give examples.

ff. Does he or she keep time records for employees?

gg. Does he or she determine whether an employee will work overtime?

hh. Does he or she make employee progress reports? If so, describe the nature of such reports, to whom made, recommendations, and results of such reports. Give examples.

ii. Does he or she inspect the work of employees? Frequency? For what purpose? His or her actions upon receiving outstanding or unsatisfactory work?

jj. Does he or she report rules infractions? Warn or reprimand employees? By what authority? To whom does he or she report? Does he or she make any recommendations? Is it effective? Give examples.

kk. Compare his or her seniority with other employees. Ascertain whether this may be a case of an older, more experienced person exercising purported authority.

ll. What is the ratio of supervisory to nonsupervisory employees?

mm. Does the person in question deny being a supervisor? What are his or her reasons?

nn. Does he or she pledge the employer's credit? Under what circumstances? Extent of authority? Frequency?

D. Part-time, temporary, or casual employees

1. Relevant questions include the following:

a. Classification, department, shift, rate of pay, supervisor.

b Description of job duties. Are they similar to those of permanent employees?

c. Number of hours worked daily, weekly, monthly. On regular basis?

d. Is work performed on specified days or other periods? Describe. Does employee have an expectation of continued employment of that nature?

e. How long has employee worked in this manner?

f. Who and what circumstances determines where and how long employee will work? What was he or she told about his or her tenure when hired?

g. What does employee do when not working for employer? If on "on call" basis, may employee accept or reject work when called?

h. Does employee punch timeclock? Is it one used by full-time employees?

i. Is employee on regular full-time payroll or a special payroll?

j. Are social security and withholding taxes withheld from pay?

k. Is employee covered by worker's compensation or other insurance?

l. Does employee share in any benefits or privileges given to regular employees? To what extent? Benefits not received?

m. Compare rate, hours, working conditions, supervision, etc., with those of other regular employees.

n. Has the employee an expectation of becoming a permanent employee? How frequently does that occur?

o. To what extent is the turnover rate for employee classification in issue?

E. Seasonal employees

1. Relevant questions include the following:

a. Does employer draw seasonal employees year after year from the same labor force composed primarily of former employees?

b. What is employer's policy regarding recall of seasonal employees? Are they given preference?

c. Does employer keep a record of seasonal employees for the next season? Describe. How is it used?

d. What percentage of seasonal employees return year after year?

e. From what other sources does employer obtain seasonal employees?

f. Do seasonal employees work together with and under same conditions as permanent employees?

g. When does the seasonal period occur?

h. What is employer's seasonal peak work force? Number, classification?

i. What is employer's permanent work force? Number, classifications?

j. Describe benefits given to permanent employees.

k. Describe benefits given to seasonal employees.

l. Is there eligibility for seasonal employees to become permanent employees?

m. Is there any difference in rate of pay? Supervision? If so, describe.

n. What notice is given to seasonal employees on their hiring, discharge, reemployment prospects?

F. Laid-off employees

1. Relevant questions include the following:

a. Hiring date, classification, department, shift, supervisor rate, seniority standing.

b. Duties.

c. Lay-off date; by whom? Reason given for layoff; orally, on separation notice?

d. Others laid off at same time? number, classification, department, shift, reason?

e. At time of layoff, what was said about recall? Subsequent conversations about recall?

f. Has employee been laid off before? When, why, how long?

g. Company policy and practice regarding recall of laid-off employees.

h. Have other employees been recalled? When? Department, classification, shift, reason?

i. During layoff period, was employee continued on payroll; insurance, seniority, or other benefits continued?

j. Is the reason for the layoff of a temporary nature?

k. Will additional employees be needed? If so, when, number, classification, department, shift?

G. Trainees and probationary employees

1. Relevant questions include the following:

a. Describe details of training program, duration, purpose.

b. In which job or classification is trainee working?

c. What will be assignment of trainee upon completion of training?

d. With which other employees does he or she work?

e. Does he or she perform the same or similar duties as other unit employees?

f. Compare supervison with that of other employees.

g. Compare benefits and working conditions with those of other employees.

PART VI. HISTORY OF COLLECTIVE NEGOTIATIONS

The history of collective negotiations prior to and subsequent to the enactment of the Act may be relevant to the determination of an appropriate unit and/or unit definition with respect to supervisors in certificated and classified employee groups.

A. Introduce history of negotiations; if none, so state.

B. Introduce into the record copies of negotiated contracts, agreements or memoranda, as relevant.

C. If no copies available, the record should show:

1. Type of agreement, e.g., written, oral, signed, unsigned, etc.

2. Parties to contract

3. Date executed, date effective, and terms

4. Provisions for automatic renewal, opening, or termination

5. Recognition clauses - is it members only? - all employees in the unit?

6. Classification of employees involved

7. Scope of contract-recognitional or substantive

8. Differences, if any, between classifications of employees covered by the contract and the present unit being sought

9. Does contract contain substantive terms and conditions?

D. If no written agreements prior to the Act, what type of relationship existed between parties?

1. Did school employer deal with a single organization? Many?

2. Did the parties meet and confer to discuss terms and conditions of employment?

3. Proposals (oral or written) submitted; counterproposals made?

4. A full discussion and exchange of ideas

5. Any adjustments, concessions, or compromises arrived at?

(Get specific evidence, not conclusionary "Yes" or "No" to these questions. Record should show precisely what items were discussed, positions of parties on same, whether they were dropped, resolved by adjustmennt, adopted, deferred until next year, etc.)

6. Parties meet on regular recurring basis, e.g., once a year, for purpose of "negotiating" or discussion? What resulted from these meetings?

7. How many sessions involved in each set of "negotiations"?

8. Who took initiative to bring parties together? Employer solicit proposals or wait for organization to seek him or her out?

9. Is there a pattern of employer either soliciting or entertaining requests or suggestions?

10. Employer meet with any and all representatives? If he or she met with only one representative, was that by policy or simply because only one representative existed?

11. Was the majority status of the employee representative ever demonstrated to the employer? If so, how? With what frequency, if any?

12. For what group of employees did the representative act?

13. Did the employee representative process grievances?

14. Did benefit of membership apply only to members of employee organization such as seniority, pension, special insurance, death benefits?

15. Where did "negotiations" or discussions occur--at public meeting, executive session of legislative body, special meeting for the purpose?

16. What other activities did employees engage in in an effort to affect working conditions--lobby, campaign contributions, campaign work, referendum, dinners, private conversations?

17. Has employer dealt at any time with any other group in any way? If so, how?

PART VII. APPROPRIATENESS OF UNIT

A. General factors pertaining to inclusion or exclusion

1. Duties and location of work.
2. Nature of and by whom supervised.
3. Skills and equipment operated.
4. Education, training, and experience.
5. Hours.
6. Compensation.
7. Interchange.
8. Seniority.
9. Employee benefits.
10. Use of facilities.
11. Progression.
12. Bargaining history.

B. Departmental units

1. Relevant questions include the following:

   a. Name or designation given the department by the employer

   b. Is the group a homogeneous distinct department within the employer's organizational structure?

   c. Describe the functions or work of the group. What skills are required?

   d. Who supervises the group? To whom does he or she report and for what purpose?

   e. Describe the relationship or flow of work between this group and other groups.

   f. Is the work performed by this group duplicated in other groups or departments? If so, describe.

g. Is there any interchange of employees between this group and other departments? If so, determine reason, employees involved, and frequency.

h. Describe any interchange or common use of equipment or tools.

i. Describe the physical dispersement of employees within the group.

j. Are employees in the group identified with trades or occupations distinct from those of other employees? Describe any duplications.

k. Are all the employees in the group or department included in the proposed unit? If not, explain any exclusions.

l. List all classifications within the department and the number of employees in each.

m. Describe the bargaining history for the group.

n. If departmental severence is sought, is the labor organization seeking severence, one which has traditionally represented the type of employees in the group?

o. If severance is sought, develop factors similar to craft severance.

C. Craft units

1. Relevant questions include the following:

a. Does the proposed unit consist of a true and homogeneous craft group?

(1) What is the craft group sought?

(2) Is any noncraft work done?

(3) Do other employees do alleged craft work?

(4) Does their work require full use of craft skills?

(5) How does their employer classify them -- as journeymen -- as first class, second class, etc.?

(6) Have members of the proposed unit participated in a fixed apprenticeship program of sufficient duration?

(7) Has a formal apprenticeship training program been established by the employer?

(8) During slack periods of work can the employees "bump" other employees or be "bumped" by other employees?

(9) What is the rate of employee turnover in the work force of the proposed unit?

b. What is the history of collective bargaining of the employees sought to be represented?

(1) Were the employees represented in the past and, if so, in what type of unit were they included?

(2) How long have they been represented?

(3) Who represented them?

(4) Has the craft group acquiesced in such representation?

(5) Did the proposed group have a chance to vote in a self-determination election?

(6) Was the craft organized at the time the broader unit was established?

(7) Have the employees been members of a craft union? How long?

c. Have the employees in the proposed unit established and maintained their separate identities during any period of inclusion in a broader unit?

(1) Do they have different wage rates, mode of payment, fringe benefits, or hours of work?

(2) When compared to other employees, are their working conditions the same?

(3) Do different degrees or standards for supervision exist?

(4) Do they have their own immediate supervisor?

(5) Is it one belonging to some craft?

(6) Are their work assignments similar to those of each others yet different from those of other employees?

(7) Are they required to wear different uniforms, use different equipment, or handle different products?

(8) Do they have separate seniority list or promotion system?

(9) What is their relationship with customers compared to that of other employees?

(10) Where is their position in the company's organizational scheme?

d. What is the history and pattern of collective bargaining in the industry involved?

(1) Has a similar unit previously been separately represented in the same industry?

(2) Has bargaining in such units been unsuccessful?

(3) Is such unit representation prevalent in the industry or are other such units looked upon as unique situations?

(4) Has the industry enjoyed a stable bargaining situation under the pattern of representation it has followed?

(5) What is the bargaining history at the employer's other plants?

(6) What is the bargaining practice in the area?

e. What is the degree of integration of the employer's production processes?

(1) To what extent does the production process depend upon the performance of the employees in the proposed unit?

(2) How large is the plant?

(3) What is the size of the proposed unit?

(4) Do the employees work separately or among other groups of employees? To what extent do the employees have contact with other employees at facilities provided by the employer and/or by being mobile in the plant?

(5) How frequent is the interchange or transfer between employees of the proposed unit and other employees?

(6) How frequent is the interchange of equipment?

f. What are the qualifications of the union seeking severence, if such is the case?

(1) What is the union's experience in representing employees like those in the proposed unit?

(2) What is the union's experience in the industry involved?

(3) Is the union considered a "traditional union" for the situtation presented?

PART VIII. RELEVANT SECTIONS OF CALIFORNIA CIVIL CODE OF PROCEDURE REGARDING SUBPOENA

A. Code sections

§ 1985. [Issuance of subpoena or duces tecum]

The process by which the attendance of a witness is required is the subpoena. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence. When a county recorder is using the microfilm system for recording, and he is subpoenaed to present a record, he shall be deemed to have complied with the subpoena if he produces a certified copy thereof.

A copy of an affidavit shall be served with a subpoena duces tecum issued before trial, showing good cause for the production of the matters and things described in such subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his possession or under his control.

The clerk, or if there be no clerk, the judge shall issue a subpoena or subpoena duces tecum signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service. Nothing herein shall authorize the issuance of a subpoena or subpoena duces tecum in cases provided for by Sections 68097.1 to 68097.10, inclusive, of the Government Code unless the required payment or deposit has been made.

§ 1985.1. [Agreement to appear at time not specified in subpoena]

Any person who is subpoenaed to appear at a session of court, or at the trial of an issue therein, may, in lieu of appearance at the time specified in the subpoena, agree with the party at whose request the subpoena was issued to appear at another time or upon such notice as may be agreed upon. Any failure to appear pursuant to such agreement may be punished as a contempt by the court issuing the subpoena. The facts establishing or disproving such agreement and the failure to appear may be proved by an affidavit of any person having personal knowledge of the facts.

§ 1985.5. [Subpoena provision where witness to appear out of court]

If a subpena requires the attendance of a witness before an officer or commissioner out of court, it shall, for a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, also require the witness to attend a session of the court issuing the subpena at a time and place thereof to be fixed by said officer or commissioner.

§ 1986.5. [Right of person subpoenaed, for deposition, to receive fees and mileage]

Any person who is subpoenaed and required to give a deposition shall be entitled to receive the same witness fees and mileage as if the subpoena required him to attend and testify before a court in which the action or proceeding is pending.

§ 1987. [Service of subpoena, or of written notice]

(a) Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting such witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of such party or person. Such notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, such witness, upon demand, shall be paid witness fees and mileage before being required to testify. The giving of such notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the court may make such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court. Such notice cannot require the attendance of such witness at a place more than 150 miles from the residence of such witness.

(c) If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within such shorter time as the court may order, it may include a request that such party or person bring with him books, documents or other things. The notice shall state the exact materials or things desired and that such party or person has them in his possession or under his control. Within five days thereafter, or such other period as the court may allow, the party or person of whom the request is made may serve and file written objections to the request or any part thereof, with a statement of grounds. Thereafter, upon noticed motion of the requesting party, accompanied by a showing of good cause and of materiality of the items to the issues, the court may order production of items to which objection was made, unless the objecting party or person establishes good cause for nonproduction or production under limitations or conditions. The procedure of this subdivision is alternative to the procedure provided by Sections 1985 and 1987.5 in the cases herein provided for, and no subpoena duces tecum shall be required.

Subject to the provisions of this subdivision, the notice herein provided shall have the same effect as is provided in subdivision (b) as to a notice for attendance of such party or person.

§ 1987.3. [Exemption of custodian of business records, etc., from attendance requirement]

When a subpoena duces tecum is served upon a custodian of records or other qualified witness as provided in Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, and his personal attendance is not required by the terms of the subpoena, Section 1989 shall not apply.

§ 1987.5. [Service of copy of affidavit for subpoena duces tecum, and filing original]

The service of a subpoena duces tecum is invalid unless at the time of such service a copy of the affidavit upon which the subpoena is based is served on the person served with the subpoena. The original affidavit shall be filed with the court issuing the subpoena before the time designated for the appearance of the witness and production of the matters and things described in the subpoena, and in the case of a subpoena duces tecum which requires appearance and the production of matters and things at the taking of a deposition, the original shall be so filed not less than five days before such designated time, unless the court otherwise orders.

§ 1988. [Service if witness concealed]

If a witness is concealed in a building or vessel, so as to prevent the service of a subpena upon him, any court or judge, or any officer issuing the subpena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the sheriff of the county serve the subpena; and the sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

§ 1989. [Attendance of witness outside of county of residence]

A witness is not obliged to attend as a witness before any court, judge, justice, or any other officer, out of the county in which he resides, unless the distance be less than one hundred fifty miles from his place of residence to the place of trial.

PART IX

STATE OF CALIFORNIA

STANDARD FORMS AND NOTICES USED

BY THE EDUCATIONAL EMPLOYMENT RELATIONS BOARD

UNDER THE RODDA ACT

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:	
Charging Party,	
vs.	Case No.
Respondent.	

NOTICE OF INFORMAL CONFERENCE

PLEASE TAKE NOTICE that on the _____day of _____, 19____ at _____

_____

California, beginning at _____, an informal conference will be held pursuant to 8 Cal. Adm. Code 35017 on an unfair practice charge filed by the above-named charging party against the above-named respondent(s) before a representative of the Educational Employment Relations Board, at which time the parties should appear in person, by counsel, or other representatives.

At said conference, the parties should be prepared to discuss the issues and where possible, reach agreement thereon and/or reduce the number thereof. At said conference the date for the formal hearing if not yet set, may be set.

DATED: _____

WILLIAM P. SMITH
General Counsel

BY: _____

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:	
Charging Party,	Case No.
vs.	
Respondent.	

NOTICE OF HEARING

PLEASE TAKE NOTICE that the Educational Employment Relations Board will conduct a hearing on an unfair practice charge filed by the above-named charging party against the above-named respondent(s).

The hearing will be held on the _____day of_____, 197__, at _____

_____

beginning at _____, and continuing day to day thereafter.

At the time and place specified above, the parties shall have the right to appear in person, by counsel or other representative and to call, examine and cross-examine witnesses and introduce documentary and other evidence on the issues.

DATED:_____

WILLIAM P. SMITH,
General Counsel

By: _____

CASE NAME:
CASE NUMBER:
DATE:

Enclosed please find a copy of the unfair labor charge filed in the above titled matter by the _____ against _____.

Also attached is a Notice of Appearance form. If you intend to be represented by an agent or attorney other than the agent who filed the charge, it will be necessary that this form be completed and returned signed by the filing party and any representative who may appear on your behalf at any proceeding of this matter.

Rules and Regulations governing unfair practice proceedings are available in each Regional Office and the Office of Procurement, Publications Section, P.O. Box 20191, Sacramento, CA 95820. You may also refer to Government Code Sections 3540, et seq.

Any communication to the Board concerning this matter shall be referred to the _____Regional Office. Please refer to the case number noted above.

Terrell J. Lindsey

Terrell J. Lindsey
Acting Regional Director

Enclosures
TJL:jm

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
923 12th Street
SACRAMENTO, CA 95814
(916) 322-3088

Date:
Case Name:
Case No:

Enclosed please find a copy of an unfair practice charge filed in the above entitled matter by
pursuant to Section 35008 of the Regulations for Unfair Practice Procedures.

You are required to file an answer which must be received by the appropriate Regional Office within 15 calendar days following personal delivery of the charge or within 20 calendar days after the postmark date on the charge if mailed. Your answer must be accompanied by proof of service on the charging party within the same time limits.

Also attached is a Notice of Appearance form. This form should be completed and returned with your answer to the charge.

Rules and Regulations governing unfair practice proceedings are available in each Regional Office and the Office of Procurement, Publications Section, P.O. Box 20191, Sacramento, Ca. 95820. You may also refer to Government Code Sections 3540, et seq.

Any communication to the Board concerning this matter shall be referred to the Regional Office. Please refer to the case number noted above.

Sincerely,

Terrell J. Lindsey

Terrell J. Lindsey
Acting Regional Director

Enclosures
TJL:jm

State of California

Educational Employment Relations Board

UNFAIR PRACTICE CHARGE

	DO NOT WRITE IN THIS SPACE
INSTRUCTIONS: File an original and two (2) copies of this charge in the appropriate regional office of the Educational Employment Relations Board. If additional space is needed for any item, attach additional sheets and number items accordingly.	Case name: Case no: Date filed:

1. CHARGING PARTY: ( ) EMPLOYEE ( ) EMPLOYEE ORGANIZATION ( ) EMPLOYER

a. Full name:

b. Mailing address:

c. Telephone number: (area code) _____

d. Name, title and telephone number of agent filing charge, if any:

2. CHARGE FILED AGAINST: ( ) EMPLOYEE ORGANIZATION ( ) EMPLOYER

a. Full name:

b. Mailing address:

c. Telephone number: (area code) _____

d. Name, title and telephone number of agent to contact, if any:

3. NAME OF EMPLOYER *(Complete this section only if the charge is filed against an employee organization)*

a. Full name:

b. Mailing address:

4. GRIEVANCE PROCEDURE

a. Has any grievance procedure been invoked in relation to the subject matter of this charge? *(Circle answer)* Yes No

b. If "yes," when? _____

5. STATEMENT OF CHARGE

The charging party hereby alleges that the above-named respondent has engaged in or is engaging in an unfair practice within the meaning of section 3543.5 or 3543.6. The specific section(s) (and subsection where appropriate), alleged to have been violated is/are: _____

of the California Government Code, in that: (*Provide a clear and concise statement of the conduct alleged to constitute an unfair practice, including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved.*)

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief.

Signed: _____ Date: _____

Title, if any:

Mailing address:

Telephone number:

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of: Employer, -and- Employee Organization, -and- Employee Organization, -and- Employee Organization, -and- Employee Organization	Case No. NOTICE OF PRE-HEARING CONFERENCE AND OF DATE FOR SETTING HEARING

PLEASE TAKE NOTICE that on the _____day of _____, 1976, at _____

_____, California, beginning at _____a.m. a Pre-Hearing Conference will be held in the matter of the above-captioned unit determination case before a hearing officer of the Educational Employment Relations Board, at which time all parties should appear in person, by counsel or other representatives.

At said conference, the parties should be prepared to discuss the issues, and where possible, reach agreement thereon and/or reduce the number thereof.

At the conclusion of said conference the date will be set for the unit determination hearing.

DATED: _____

_____

Charles Cole, Executive Director

TO:

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of: Employer, -and- Employee Organization, -and- Employee Organization, -and- Employee Organization, -and- Employee Organization	Case No. NOTICE OF HEARING AND PRE-HEARING CONFERENCE

PLEASE TAKE NOTICE that on the _____ day of _____, 1976 at _____

_____

_____, California, beginning at _____ a.m. a Pre-Hearing Conference will be held in the matter of the above-captioned unit determination case before a hearing officer of the Educational Employment Relations Board, at which time all parties should appear in person, by counsel or other

representatives.

At said conference, the parties should be prepared to discuss the issues, and where possible, reach agreement thereon and/or reduce the number thereof.

A unit determination hearing will be held before a hearing officer of the Educational Employment Relations Board on the _____day of _____ 1976, and continuing day to day thereafter until completion at_____

_____

_____

beginning at _____a.m., at which time all parties shall have the right to appear in person, by counsel, or by other representative and to call, examine and cross-examine witnesses and introduce documentary andother evidence on the issues.

DATE: _____

_____

Charles Cole, Executive Director

TO:

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of: Employer, -and- Employee Organization, -and- Employee Organization, -and- Employee Organization, -and- Employee Organization	Case No. NOTICE OF HEARING AND PRE-HEARING CONFERENCE

PLEASE TAKE NOTICE that on the _____ day of _____, 1976 at _____

_____

_____, California, beginning at _____ a.m. a Pre-Hearing Conference will be held in the matter of the above-captioned unit determination case before a hearing officer of the Educational Employment Relations Board, at which time all parties should appear in person, by counsel or other

ER
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V. 8-72)

representatives.

At said conference, the parties should be prepared to discuss the issues, and where possible, reach agreement thereon and/or reduce the number thereof.

At the conclusion of said conference a unit determination hearing will be held before a hearing officer of the Educational Employment Relations Board and continuing day to day thereafter until completion, at which time all parties shall have the right to appear 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.

DATED: _____

_____

Charles Cole, Executive Director

TO:

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD
923 12th Street
SACRAMENTO, CA 95814
(916) 322-3088

RE:

The transcript in the above-captioned matter has been prepared and copies are being served on this date upon the parties who requested them. Please be advised that the date for filing of post-hearing briefs is

This filing date supersedes any other briefing schedule set by the hearing officer at the time of hearing.

Yours truly,

Charles Cole

Charles Cole
Executive Director

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD
923 12th Street
SACRAMENTO, CA 95814
(916) 322-3088

EDMUND G. BROWN JR., Governor

DATE: _____ EERB FILE NO.: _____

HEARING LOCATION: _____ IN RE: _____

_____

NOTICE OF APPEARANCE

PARTY:

Name of District or Organization: _____

Address: _____

_____

Telephone: _____

Contact Person: _____

REPRESENTED BY:

Name: _____

Position: _____

Address: _____

_____

Telephone: _____

BEFORE THE

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of the

}

Case No._____

SUBPOENA

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

You are hereby commanded, business and excuses being set aside, to attend and to testify at the request of_____ in the above proceeding at _____ _____, California, on the _____day of_____ _____, 19_____, at the hour of_____o'clock, _____m.

Disobedience to this subpoena may be punished as contempt in the manner and form prescribed by law.

WITNESS my hand this _____day of_____, 19_____.

Educational Employment Relations Board

By_____

Board Agent

Authority: Gov. Code, sec. 3541.3(a)

BEFORE THE

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of the)

Case No._____

S U P E N A

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

You are hereby commanded, business and excuses being set aside, to attend and to testify at the request of _____, in the above proceeding at _____ _____, California, on the _____day of _____ _____, 19____, at the hour of _____o'clock, _____m.

Disobedience to this subpena may be punished as contempt in the manner and form prescribed by law.

WITNESS my hand this _____day of _____, 19____.

Educational Employment Relations Board

By_____
General Counsel

Authority: Gov. Code, sec. 3541.3(a)

BEFORE THE

STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of the

} Case No._____

SUBPOENA
DUCES TECUM

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

You are hereby commanded, business and excuses being set aside, to attend and to testify at the request of_____, in the above proceeding at_____, California, on the_____day of_____, 19____, at the hour of_____o'clock, _____m. and that you bring with you and there produce the following named documents now in your custody or under your control, to wit:_____

_____

_____

_____

Disobedience to this subpoena may be punished as contempt in the manner and form prescribed by law.

WITNESS my hand this_____day of_____, 19_____.

Educational Employment Relations Board

By_____

Board Agent

Authority: Gov. Code, sec. 3541.3(a)

N O T I C E

The issuance of the Notice of Hearing and Pre-Hearing Conference in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary settlements.

Any inquiries or requests for additional information in regards to this case should be directed to _____ _____, Board Agent assigned to the case.

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

REQUEST TO PROCEED

In the matter of _____ _____
(Name of Representation Case) (Name of Representation Case)

The undersigned hereby requests the Regional Director to proceed with the above-captioned representation case, notwithstanding the charges of unfair labor practices filed in Unfair Case No. _____. It is understood that the Board will not entertain objections to any election in this matter based upon the conduct alleged in the above-referred to Unfair Charge.

Date _____ _____

By _____

_____
(Title)

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

WITHDRAWAL REQUEST

In the matter of _____ _____
(Name of Unfair Case) (Number of Unfair Case)

This is to request withdrawal of the charge in the above case with/without prejudice. (Please indicate)

_____
(Name of Party Filing)

Withdrawal request approved:

By _____
(Name of Representative)

_____
Los Angeles Regional Director
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

_____
(Title)

Date _____

PROOF OF SERVICE BY MAIL - C.C.P. 1013a

I declare that I am employed in the county of Sacramento, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 923 - 12th Street, Suite 300, Sacramento, California 95814. On _____, I served the _____ _____ on the _____ _____ by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at _____ addressed as follows:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on _____, at _____, California.

_____ _____

(Type or print name) (Signature)

APPENDIX TO TAB D

EERB Rules and Regulations

EERB Resolution No. 7 Regarding Duties of Executive Director and General Counsel

Legal Terminology Commonly Used in Administrative Hearings

educational
employment relations board

923 12th street sacramento, ca. 95814 (916) 322-3088
Vol. 1, No. 5 August 9, 1976

BULLETIN

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD
923 - 12th Street
SACRAMENTO, CA. 95814
(916) 322-3088

EDMUND G. BROWN JR., Governor

August 4, 1976

Dear Interested Party:

Attached is a copy of the Board's permanent rules and regulations governing general procedures and representation proceedings. The rules are permanent despite the title "Emergency Order" which is necessitated by certain administrative requirements.

These regulations contain a new numbering system and numerous substantive changes. Parties are urged to review the document in its entirety.

The emergency regulations, effective April 1, 1976, relating to representation matters have been repealed. In addition, Chapter 1.5 and Sections 35013-35014 and 35021-35025 of the Emergency Unfair Practice Regulations, adopted on July 1, 1976, have been repealed and readopted without change as general procedures in the permanent regulations.

Any substantive changes do not apply retroactively, but will govern all proceedings after July 30, 1976. However, any documents filed pursuant to the April 1, 1976 rules and regulations should not be resubmitted.

A detailed "Table of Contents" indicating areas of substantive change and indexing former sections to the new section numbers of the permanent regulations is also enclosed.

The major substantive changes relating to representation proceedings are summarized below following the new section number.

Section Number	Subject
Ch. 2, Art. 3	- General Provisions for both Representation and Unfair Practice Proceedings
33030	- Proof of Support
33080	- Posting of Intervention
33100	- Amendment to Request or Intervention
33190	- Employer Decision
33210	- Employer Decision-Time extended for amended request for recognition
33220	- Employer 3544.5 Petition
33230	- Employee Organization 3544.5 Petition
33340	- Application to Join Representation Hearing as a Party
33480	- Eligibility to Appear on Ballot
33660	- Twelve-Month Election Bar

Sincerely,

Charles L. Cole

Charles L. Cole
Executive Director

Enclosure

REPRESENTATION REGULATIONS

DETAILED TABLE OF CONTENTS

CHAPTER 3. REPRESENTATION PROCEEDINGS

Article 1. GENERAL PROVISIONS

Article 2. REQUESTS FOR RECOGNITION AND INTERVENTION

Article 3. PETITION FOR REPRESENTATION ELECTION

Article 4. EMPLOYER DECISION: REQUESTS FOR BOARD

(NOTE: Underlined sections have undergone substantive change.)

Form 400 (REV 9-64)

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

RECEIVED FOR FILING
JUL 30 1976
Office of Administrative Hearings

ENDORSED
APPROVED FOR FILING
(Gov. Code 11380.2)
JUL 30 1976
Office of Administrative Hearings

DO NOT WRITE IN THIS SPACE

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:
July 28, 1976
By: [signature]
Chairman
(Title)

ENDORSED
FILED
In the office of the Secretary of State
of the State of California
JUL 30 1976
At 4:20 o'clock P M.
MARCH FONG EU, Secretary of State

DO NOT WRITE IN THIS SPACE

EMERGENCY ORDER ADOPTING, AMENDING, OR REPEALING
REGULATIONS OF THE EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In accordance with the provisions of the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Sections 3541.3(e), (g), and (h) of the Government Code and to make specific Sections 3540.1, 3541.3, 3541.5, 3544,, 3544.1, 3544.5, 3544.7 and 3546 of the Government Code The Educational Employment Relations Board hereby repeals and adopts regulations in Part III, Title 8, California Administrative Code as follows:

(1) Repeals Chapters 1, 1.5, 2, 3, 4, 5, 6 and 7 (Sections 30000-30080) of Part III of Title 8.

(2) Repeals Sections 35013, 35014, 35021, 35022, 35023, 35024, 35025 and 35035 in Chapter 10 of Part III of Title 8.

(3) Adopts new Chapters 2, 3 and 4 (Sections 32000-34040) of Part III of Title 8 to read:

DO NOT WRITE IN THIS SPACE

CHAPTER 2. GENERAL PROVISIONS

Article 1. Definitions

32000. Terms Defined by Act. As used in these rules and regulations, the terms "Board", "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.

32010. 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).

STD. 400A (6-71)

CONTINUATION SHEET
FOR FILING ADMINSTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

32020. Board. "Board", in addition to the definition set forth in Section 3540.1(a) of the Act, means the three member Educational Employment Relations Board, any individual board member or any board agent.

32030. Board Itself. "Board itself" means only the three member Educational Employment Relations Board.

32040. Executive Director. "Executive Director" means the officer of that title appointed by the Board pursuant to Section 3541(e) of the Act.

32050. General Counsel. "General Counsel" means the officer of that title appointed by the Board pursuant to Section 3541(e) of the Act.

32060. Headquarters Office. "The headquarters office" means the main office of the board members, the general counsel, and the executive director. The headquarters office shall be located at 923 12th Street, Sacramento, CA 95814.

32070. Intervening Organization. "Intervening Organization" or "Intervenor" means either of the following:

(a) An employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit pursuant to Section 3544.1(b) of the Act; or

(b) An employee organization filing a request to appear on the ballot following the filing of a petition for a representation election by employees pursuant to Section 3544.3 of the Act.

32080. Regional Director. "Regional Director" means the board agent designated as director for a regional office of the Board.

32090. Regional Office. "The regional office" means the office established by the Board 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:

Alpine	Madera	Sierra
Amador	Mariposa	Siskiyou
Butte	Merced	Stanislaus
Calaveras	Modoc	Sutter
Colusa	Mono	Tehama
El Dorado	Nevada	Trinity
Fresno	Placer	Tulare
Glenn	Plumas	Tuolumne
Inyo	Sacramento	Yolo
Kings	San Joaquin	Yuba
Lassen	Shasta	

DO NOT WRITE IN THIS SPACE

Counties included in San Francisco Regional Office jurisdiction:

Alameda	Napa
Contra Costa	San Benito
Del Norte	San Francisco
Humboldt	San Mateo
Lake	Santa Clara
Marin	Santa Cruz
Mendocino	Solano
Monterey	Sonoma

Counties included in Los Angeles Regional Office jurisdiction:

Imperial	San Bernardino
Kern	San Diego
Los Angeles	San Luis Obispo
Orange	Santa Barbara
Riverside	Ventura

32100. School District. "School District" as used in the Act means a school district of any kind or class, including any public community college district, within the state.

32110. Workday. "Workday" means a day when schools in a district are in session, excluding Saturdays, Sundays and summer sessions.

Article 2. General Provisions

32120. Filing Contracts with Board. Each employer entering into a written agreement with an exclusive representative pursuant to the Act shall file an executed copy of the agreement with the Board within 60 calendar days after execution of the agreement.

32130. Computation of Time. In computing any period of time under these rules and regulations, the period of time begins to run the day after the act or occurrence referred to.

32140. Service. All documents referred to in these rules and regulations, except subpoenas, shall be considered "served" by the Board or a party when personally delivered or deposited in the first-class mail properly addressed.

Article 3. General Provisions Relating to Representation Proceedings and Unfair Practice Proceedings

32150. Subpoenas.

(a) Before the hearing has commenced the Board shall issue subpoenas at the request of any party for attendance of witnesses or production of documents at the hearing. Compliance with the provisions of Section 1935 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena for production of documents. After the hearing has commenced the Board may issue subpoenas.

STD. 400A (6-71)

CONTINUATION SHEET
FOR FILING ADMINSTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

(b) The process issued pursuant to subdivision (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which the witness resides unless the distance is less than 150 miles from the witness' place of residence except that the Board, upon the affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of three dollars ($3) for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

(d) A written motion to revoke a subpoena may be filed prior to the hearing or an oral motion made at the commencement of the hearing. The Board shall revoke the subpoena if the evidence requested to be produced is not relevant to any matter under consideration in the hearing or the subpoena is otherwise invalid.

(e) Upon a finding of the Board itself that a board agent or a board document is essential to the resolution of a case and that no rational decision of the Board can be reached without such agent or document, the Board itself shall willingly produce the agent or document if subpoenaed to do so by any party to the dispute.

32160. Depositions. The Board may order the taking of testimony of a material witness within or outside the State by deposition in the manner prescribed for civil actions only upon the filing of an application by a party showing that:

(a) the witness is unable to attend the hearing because of illness, infirmity or imprisonment; or

(b) the witness cannot be compelled to attend the hearing by subpoena.

The application shall state the case number; name and address of the witness, show the materiality of the testimony, and shall request an order requiring the witness to appear and testify before a named officer authorized by law to take depositions. Where the witness resides outside the State and the Board has authorized a deposition of the witness, the Board shall obtain an order of the Superior Court in Sacramento County for that purpose pursuant to Section 11189 of the Government Code.

32170. Powers and Duties of Board Agent Conducting a Hearing. The board agent conducting a hearing shall have the powers and duties to:

(a) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;

(b) Authorize the taking of depositions;

(c) Issue subpoenas and rule upon petitions to revoke subpoenas;

(d) Regulate the course and conduct of the hearing;

(e) Hold conferences for the settlement or simplification of issues;

(f) Rule on objections, motions and questions of procedure;

(g) Administer oaths and affirmations;

(h) Take evidence and rule on the admissibility of evidence;

(i) Examine witnesses for the purpose of clarifying the facts and issues;

(j) Authorize the submission of briefs and set the time for the filing thereof;

(k) Hear oral argument;

(l) Render and serve the recommended decision on each party.

32180. Rights of Parties. Each party to the hearing shall have the right to appear 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.

32190. Motions.

(a) Before the commencement of the hearing a party may file a motion with the board agent assigned to the hearing which shall state the desired relief and state the facts and arguments upon which the motion is based. A copy of the motion shall be served on each party to the hearing. A response to the motion may be filed by the respondent within seven calendar days after service of the motion.

(b) If the hearing has commenced, a motion or the response may be made orally on the record.

(c) The Board may hear oral argument or take evidence on any motion.

32200. Objection to Ruling on Motions. A party may object to the ruling on a motion by the board agent and request a ruling by the Board itself. The request shall be made in writing to the board agent and a copy shall be sent to the Board itself. The board agent may refuse the request or join in the request and thereby certify the matter to the Board itself. The board agent may join in the request only where all of the following apply:

STD. 400A (6-71)

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

(a) The issue involved is one of law;

(b) The issue involved is controlling in the case; and

(c) An immediate appeal will materially advance the resolution of the case.

32210. Informational Briefs and Arguments.

(a) Any person may file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself.

(b) The petition shall include the following information:

(1) The case number;

(2) The title of the case;

(3) The name, address, telephone number and any affiliation of the petitioner;

(4) The name, address and telephone number of any agent to be contacted;

(5) A statement setting forth the nature of the petitioner's interest or involvement in the case;

(6) A statement setting forth the specific issues of procedure, fact, law or policy which the petitioner wishes to address.

32220. Contemptuous Conduct. Contemptuous conduct of a party or its agent shall be grounds for the exclusion of the party or agent from any proceeding related to the case.

32230. Refusal of Witness to Testify. The refusal of a witness at a hearing to answer any question which has been ruled proper by the board agent conducting the hearing may be grounds for striking the full testimony of such witness on the same matter.

32240. Waiver of Time Periods. All parties to a proceeding may jointly waive, subject to the approval of the Board, any time period allowed for action by a party or the Board in order to expedite any pending matter.

DO NOT WRITE IN THIS SPACE

CHAPTER 3. REPRESENTATION PROCEEDINGS

Article 1. General Provisions

33000. Voluntary Resolution of Disputes. It is the policy of the Board to encourage the 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.

33010. File with Employer. "File with an employer" means personal delivery or actual delivery by certified mail to either the superintendent, deputy superintendent or assistant superintendent of a school district, or to the school board at a regular or extraordinary meeting.

33020. File with Board. "File with the Board" or "File with the regional office" means personal delivery or actual delivery by certified mail to the Board.

33030. Proof of Majority Support or At Least 30 Percent Support.

(a) Evidence of"proof of majority support"shall consist of one or more of the following types:

(1) Current dues deduction authorizations;

(2) Notarized membership lists;

(3) Membership cards;

(4) Petitions signed by employees designating the organization as the exclusive representative of the employees;

(5) Other evidence as determined by the Board.

(b) Evidence of "proof of at least 30 percent support" shall consist of one or more of the following types:

(1) Current dues deduction authorizations;

(2) Notarized membership lists;

(3) Membership cards;

(4) Petitions signed by employees indicating their desire to be represented by the employee organization;

(5) Other evidence as determined by the Board.

(c) Each form of proof, excluding a notarized membership list, shall indicate the date on which each signature was obtained. A signature which is undated or which indicates that it was obtained earlier than one calendar year prior to the filing of the request or intervention with the employer or the Board shall be invalid for the purpose of calculating proof of support. In the case of a notarized membership list, the list shall be dated not earlier than one calendar year prior to the date of filing and shall be certified as accurate.

STD 400A (9-71)
CONTINUATION SHEET
FOR FILING ADMINSTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11350.1)

DO NOT WRITE IN THIS SPACE

33040. Third Party Verification of Proof of Majority Support or of At Least 30 Percent Support. By mutual agreement of the employer and employee organization, the proof of majority support or of at least 30 percent support required to be filed pursuant to Section 33050(b) or 33070(b) may be submitted to a neutral third party other than the Board for verification.

Article 2. Request for Recognition and Intervention

33050. Request for Recognition.

(a) An employee organization may file with the employer a request for recognition as the exclusive representative of an appropriate unit. The request shall contain the following information:

(1) The name and address of the employee organization requesting recognition, and the name, address and telephone number of the employee organization agent to be contacted;

(2) The name, address and county of the employer;

(3) The date the request is filed with the employer;

(4) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(5) The approximate number of employees in the unit claimed to be appropriate;

(6) A statement that a majority of the employees in the unit claimed to be appropriate wish to be represented by the employee organization;

(7) 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, 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;

(8) 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;

(b) Proof of majority support in the unit claimed to be appropriate, or a verified copy thereof, shall be filed with the employer concurrent with the request.

(c) The employee organization shall concurrently send a copy of the request, excluding the proof of majority support, to the regional office.

33060. Posting Notice of Request for Recognition.

(a) The employer shall post a notice of the request for recognition within five workdays following receipt of the request.

(b) The notice 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.

(c) The notice shall remain posted for 15 workdays.

(d) The notice shall contain the following information:

(1) A statement that the employer has received from the named employee organization a request to be recognized as the exclusive representative of the employees in the described unit based on a claim that a majority of the employees in the unit wish to be represented by the employee organization;

(2) The name and address of the employee organization filing the request for recognition;

(3) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(4) The date the request was received by the employer;

(5) The date the notice was posted;

(6) A statement that any other employee organization desiring to represent any of the employees in the unit described in the request for recognition has the right within 15 workdays following the date of posting to file an intervention supported by at least 30 percent of the employees in a unit claimed to be appropriate.

(e) The employer shall send a copy of the notice to the regional office concurrent with the posting of the notice.

33070. Intervention.

(a) An employee organization may file an intervention with the employer within 15 workdays following posting of the request for recognition. The intervention shall contain the following information:

(1) The name and address of the intervening employee organization, and the name, address and telephone number of the employee organization agent to be contacted;

(2) The name, address and county of the employer;

(3) The date the intervention is filed with the employer;

(4) A description of the grouping of jobs or positions which constitute the unit claimed to appropriate;

(5) The approximate number of employees in the unit claimed to be appropriate;

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(6) A statement alleging that at least 30 percent of the employees in the unit claimed to be appropriate have indicated their desire to be represented by the intervening employee organization;

(7) The name and address of any other employee organization which, within the 12 months preceding the intervention, either is known to have been recognized by the employer as the exclusive representative of any employees included in the unit described in the intervention, 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 intervention;

(8) 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 and the name and address of such other employee organization.

(b) Proof of at least 30 percent support in the unit claimed to be appropriate, or a verified copy thereof, shall be filed with the employer concurrent with the intervention.

(c) The intervening organization shall concurrently send a copy of the intervention, excluding the proof of at least 30 percent support, to the regional office. The intervening organization shall concurrently serve a copy of the intervention on each other employee organization known to be seeking representation of any employees included in the unit described in the intervention.

33080. Posting of Notice of Intervention.

(a) The employer shall post a notice of the intervention within five workdays following receipt of the intervention.

(b) The notice 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.

(c) The notice shall remain posted for 15 workdays. The deadline for an employer's decision required by Section 33190 shall not be extended even though the posting period of the intervention extends beyond the date for filing the decision.

(d) The notice shall contain the following information:

(1) A statement that: "__(employer)_____ has received from __(employee organization)__ an intervention to the request for recognition filed by __(employee organization)__ to be recognized as the exclusive representative of an appropriate unit";

(2) The name and address of the employee organization filing the intervention;

(3) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate by the intervention;

(4) The date the intervention was received by the employer;

(5) The date the notice was posted.

(e) The employer shall concurrently send a copy of the notice of intervention to the regional office.

33090. Withdrawal of Request or Intervention. Any request for recognition or intervention may be withdrawn only by the employee organization agent who filed it. The agent shall file the withdrawal with the employer and concurrently send a copy to the regional office.

33100. Amendment of Request or Intervention; Posting Amendments.

(a) A request for recognition or intervention may be amended to correct technical errors or to delete job descriptions from the proposed unit at any time prior to the commencement of a representation hearing. The amendment shall be filed with the employer and concurrently served on any other employee organization known to be seeking recognition. No posting shall be required.

(b) A request for recognition or intervention may be amended to add new job descriptions to a proposed unit at any time prior to receipt by the requesting party of the employer decision served pursuant to Section 33190. The amendment shall be filed with the employer. The employee organization shall concurrently send a copy of the amendment to the regional office. The employer shall post a notice of the amended request or intervention within three workdays following receipt of the amendment. The notice shall conform to the requirements for posting an original request for recognition or intervention and shall remain posted for 15 workdays. The deadline for an employer decision regarding an amended request for recognition shall be extended pursuant to Section 33210.

(c) An employee organization may not, by means of an amendment, add to or modify the proof of support accompanying a request for recognition or intervent

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Article 3. Petition for Representation Election

33110. Petition for Representation Election.

(a) If no employee organization has filed a request for recognition by January 1 of any school year, a majority of the employees in an appropriate unit may petition for a representation election pursuant to Section 3544.3 of the Act.

(b) The petition shall be filed with the employer and shall contain the following information:

(1) The name, address and county of the employer;

(2) The name and address of the person designated as the representative of the employees requesting a representation election;

(3) A description of the groupings of jobs or positions which constitute the unit claimed to be appropriate;

(4) The approximate number of employees in the unit claimed to be appropriate;

(5) A statement that a majority of the employees in the unit claimed to be appropriate request a representation election to be conducted by the Educational Employment Relations Board.

(c) The signatures of a majority of the employees in the proposed unit who are requesting a representation election, or a verified copy thereof, shall be filed with the employer concurrent with the petition.

(d) The employees shall concurrently send a copy of the petition, excluding the signatures, to the regional office.

33120. Posting Notice of Petition for Representation Election.

(a) The employer shall post a notice of the petition for a representation election within five workdays following receipt of the petition.

(b) The notice 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.

(c) The notice shall remain posted for 15 workdays.

(d) The notice shall contain the following information:

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(1) 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;

(2) The name and address of the person designated as the representative of the employees requesting a representation election;

(3) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(4) The date the petition was received by the employer;

(5) The date the notice was posted;

(6) A statement that any employee organization desiring to represent any of the employees in the unit described in the petition has the right, within 15 workdays following the date of posting, to file an intervention supported by at least 30 percent of the employees in the unit claimed to be appropriate.

(e) The employer shall concurrently send a copy of the notice to the regional office.

33130. Intervening Organization.

(a) An employee organization desiring to appear on the election ballot shall be considered an intervening organization.

(b) An intervening organization shall file an intervention with the employer within 15 workdays following posting of the petition for a representation election. The intervention shall contain the following information:

(1) The name and address of the employee organization and the name, address, and telephone of the employee organization agent to be contacted;

(2) The name, address, and county of the employer;

(3) The date the intervention is filed with the employer;

(4) A description of the grouping of jobs or positions which constitute the unit claimed to be appropriate;

(5) The approximate number of employees in the unit claimed to be appropriate;

(6) A statement that proof of at least 30 percent support in the unit claimed to be appropriate has been filed with the regional office.

33140. Intervention Proof of Support to Board. Concurrent with the filing of the intervention, the intervening organization shall file a copy of the intervention with regional office accompanied by proof of at least 30 percent support in the unit claimed to be appropriate.

33150. Posting Notice of Intervention.

(a) The employer shall post a notice of the intervention no later than five workdays following receipt of the intervention.

(b) The notice 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.

(c) The notice shall remain posted for 15 workdays. The deadline for an employer's decision required by Section 33200 shall not be extended even though the posting period of the intervention extends beyond the date for filing the decision.

(d) The notice shall contain the following information:

(1) A statement that the employer has received from the named employee organization an intervention to the petition filed by a group of employees to conduct a representation election;

(2) The name and address of the employee organization filing the intervention;

(3) A description of the grouping of jobs or positions which constitute the unit the intervening employee organization claims to be appropriate;

(4) The date the intervention was received by the employer;

(5) The date the notice was posted.

(e) The employer shall concurrently send a copy of the notice of intervention to the regional office.

33160. Employee Lists. Within 10 calendar days following receipt of the

intervention, the employer shall file a list of the names and corresponding job titles of those persons employed in the unit described in the intervention with the regional office. The employer shall concurrently serve a copy of the list on each intervening employee organization.

33170. Withdrawal of Petition or Intervention. A petition for a representation election or intervention may be withdrawn only by the agent who filed it. The agent shall file the withdrawal with the employer and concurrentiy send a copy to the regional office.

33180. Amendment of Petition or Intervention; Posting Amendment.

(a) A petition for a representation election or intervention may be amended to correct technical errors or to delete job descriptions from the proposed unit at any time prior to the commencement of a representation hearing.

(b) A petition for a representation election or intervention may be amended to add new job descriptions to a proposed unit at any time prior to receipt of the employer decision served pursuant to Section 33200. The amendment shall be filed with the employer. The petitioner or intervenor shall concurrently send a copy of the amendment to the regional office. The employer shall post a notice of the amended petition or intervention within three workdays following receipt of the amendment. The notice shall conform to the requirements for posting an original petition or intervention. The deadline for an employer decision regarding an amended petition for a representation election shall be extended according to Section 33210.

(c) A petitioner or intervenor may not, by means of an amendment, add to or modify its proof of support accompanying a petition or intervention.

Article 4. Employer Decision; Request for Board Investigation

33190. Employer Decision Regarding Request for Recognition and Intervention ("Format A" or "Format B"). Within 10 calendar days following the 15 workday posting period for a request for recognition the employer shall file a decision with the regional office using either "Format A" or "Format B". A copy of the decision shall be concurrently served on each employee organization named therein.

(a) The employer shall use "Format A" if it has granted voluntary recognition pursuant to Sections 3544 and 3544.1 of the Act.

"Format A: VOLUNTARY RECOGNITION"

(1) "The _____(name)_____ School District has voluntarily recognized _____(organization)_____ as the exclusive representative for an appropriate unit of employees described below for purpose of meeting and negotiating with the district;

(2) "No intervention has been filed during the posting period";

(3) Name, address and county of the employer;

(4) Name and address of the employee organization;

(5) A description of the grouping of jobs or positions which constitute the appropriate unit;

(6) The number of employees in the unit recognized;

(7) The date of recognition.

(b) The employer shall use "Format B" if it has not granted voluntary recognition. An employer doubt of the sufficiency of proof of majority support or at least 30 percent support shall be raised at the time of filing "Format B" or it is waived. A request for a representation hearing to resolve a unit dispute may be raised by "Format B" or by the employer filing a subsequent petition pursuant to Section 33220.

"Format B: DENIAL OF RECOGNITION"

(1) Name, address and county of the employer;

(2) Information regarding request for recognition:

(a) Name and address of the employee organization and name, address and telephone of the employee organization agent;

(b) A description of the proposed unit;

(c) Does the employer doubt the sufficiency of proof of majority support? State reasons.

(d) Does the employer doubt the appropriateness of the proposed unit? If so, what jobs or positions remain in dispute? State the employer's position regarding the dispute.

(3) Were any interventions filed within the 15 workday posting period? For each intervention, please state:

(a) Name and address of the employee organization and name, address and telephone of the employee organization agent;

(b) A description of the proposed unit;

(c) Does the employer doubt sufficiency of proof of at least 30% support? State reasons.

(d) Does the employer doubt the appropriateness of the unit proposed? If so, what jobs or positions remain in dispute? State the employer's position regarding the dispute.

(4) If a unit dispute exists, does the employer request a representation hearing to be scheduled pursuant to Section 3544.5(a) of the Act at this time?

(5) If no unit dispute exists, does the employer request an election?

33200. Employer Decision Re Employee Petition For Representation Election and Intervention ("Format C"). Within 10 calendar days following the 15 workday posting period for a petition for a representation election, the employer shall file a decision with the regional office using "Format C". An employer doubt of the sufficiency of proof of majority or at least 30 percent support shall be raised at the

time of filing "Format C" or it is waived. A request for a representation hearing to resolve a unit dispute may be raised by "Format C" or by the employer filing a subsequent petition pursuant to Section 33220. A copy of the decision shall be concurrently served on the agent of each employee organization or group of employees named therein.

"Format C: EMPLOYER DECISION RE PETITION FOR REPRESENTATION ELECTION AND INTERVENTION"

(a) Name, address and county of employer;

(b) The name and address of the employee representative requesting the election;

(c) A description of the proposed unit;

(d) Does the employer doubt that the petition for election is supported by the signatures of a majority of the employees in the proposed unit?

(e) Does the employer doubt the appropriateness of the proposed unit? If so, what groupings of jobs or positions are in dispute?

(f) Were any interventions filed within the 15 workday posting period?

(g) For each intervention, please state:

(1) Name and address of employee organization, and name, address and telephone of agent;

(2) Does the employer doubt sufficiency of proof of at least 30 percent support? State reasons.

(3) Does the employer doubt the appropriateness of unit proposed? If so, what jobs or positions are in dispute? State the employer's position regarding the dispute.

(h) If a unit dispute exists, does the employer request a representation hearing to be scheduled pursuant to Section 3544.5(a) of the Act at this time?

33210. Employer Decision; Amendments. The required date of filing of an employer decision pursuant to this Article shall be postponed in the case of an amendment to a request for recognition or a petition for a representation election which adds new descriptions to a proposed unit. In the case of such amendment, the employer decision shall be filed no later than 10 calendar days following the last date of a new 15 workday posting period.

33220. Employer Petition for Board Investigation.

(a) An employer which did not request a representation hearing in its decision filed pursuant to Section 33190 or 33200 may subsequently file a petition pursuant to Section 3544.5(a) of the Act requesting the Board to investigate and decide the appropriateness of a unit described by a request for recognition, a petition for a representation election or an intervention.

(b) The petition shall be filed with the regional office and shall be concurrently served on each employee organization or representative of an employee group whose interests may be affected. A statement of proof of service shall accompany the petition.

(c) The petition shall contain the following information;

(1) The name, address and county of the employer;

(2) A copy of the employer decision filed pursuant to Section 33190 or Section 33200;

(3) A statement of any facts or areas of disagreement which have changed following the filing of the employer decision.

33230. Employee Organization Petition for Board Investigation.

(a) Within 90 calendar days following the date an employer decision i required to be filed with the regional office, an employee organization may file a petition pursuant to Section 3544.5(b) or (c) of the Act requesting the Board to investigate and decide whether the organization should be certified as the exclusive representative of an appropriate unit of employees. The petition shall allege one of the following grounds:

(1) The employer has filed a decision not to recognize the employee organization, but did not request a Board investigation; or

(2) The employer has failed to file an employer decision in response to a request for recognition or an intervention within 10 calendar days following the 15 workday posting period; or

(3) The employer has wrongfully denied a request for recognition or intervention.

(b) The petition shall be filed with the regional office and shall be concurrently served on the employer and any other employee organization known to claim to represent any employees within the proposed unit. A statement of proof of service shall be filed with the regional office.

(c) The petition shall contain the following information:

(1) The name and address of the employee organization and the name, address and telephone of the agent to be contacted;

(2) The name, address and county of the employer;

(3) A copy of the request for recognition or intervention filed with the employer;

(4) A statement of the issues in dispute.

Article 5. Decertification Petition

33240. Petition.

(a) A petition for an election to decertify an existing exclusive representative may be filed with the regional office pursuant to Section 3544.5(d) of the Act by an employee within the unit or an employee organization.

(b) The petition shall contain the following information:

(1) The name, address and telephone number of the petitioner, and the

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name, address and telephone of the agent to be contacted if any;

(2) The name, address and county of the employer;

(3) The name and address of the incumbent exclusive representative;

(4) A description of the established unit;

(5) The approximate number of employees in the unit;

(6) The date the incumbent exclusive representative was recognized or certified;

(7) The effective date and the expiration date of a current agreement covering employees in the established unit;

(8) A statement that the employees in the established unit no longer desire the recognized or certified employee organization as their exclusive representative.

(c) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

(d) The petitioner shall concurrently serve a copy of the petition, excluding the proof of at least 30 percent support on the employer, the incumbent exclusive representative, and any other employee organization known to claim to represent employees in a unit. A statement of service shall be sent to the regional office with the petition.

33250. Election.

(a) Upon receipt of a petition for decertification, the regional director shall conduct an investigation and, if appropriate, conduct an election pursuant to Article 8 of these rules and regulations.

(b) The petition shall be dismissed whenever either of the conditions of Section 3544.7(b) of the Act exist or if a representation election has been held within the 12 months immediately preceding the filing of the petition.

Article 6. Petition For Change In Unit Determination

33260. Petition.

(a) An employee organization, an employer, or both jointly, may file with the regional office a petition for a change in unit determination pursuant to Section 3541.3(c) of the Act.

(b) The petition shall contain the following information:

(1) The name, address and county of the employer;

(2) The name and address of the employee organization, and the name, address and telephone of the agent to be contacted;

(3) A description of the established unit;

(4) The approximate number of employees in the established unit;

(5) The date voluntary recognition was extended or the existing certification was issued;

(6) A description of the proposed unit;

(7) The approximate number of employees in the proposed unit;

(8) The name and address of any other employee organization known to claim to represent any employees affected by the proposed change in the established unit;

(9) A concise statement setting forth the reasons for the request to change the unit determination.

(c) A copy of a petition filed by an employee organization or an employer alone shall be concurrently served on the other party. A statement of service shall be sent to the regional office with the petition.

(d) The employer shall post a copy of the notice conspicuously on all employee bulletin boards in each facility of the employer in which members in the established unit and in the unit claimed to be appropriate are employed. The notice shall remain posted for at least five workdays.

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Article 7. Representation Hearings

33270. Board Investigation.

(a) Whenever a petition regarding a representation matter is filed with the Board and a question of representation is determined to exist, the Board shall investigate and conduct a hearing, where appropriate, according to the procedures in this Article.

(b) Whenever a petition relates to whether the proof of support accompanying a request for recognition, petition for representation election or intervention is sufficient, the question shall be decided administratively unless, on its own motion, the Board schedules a hearing regarding the matter.

(c) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) the petitioner has no standing to petition for the action requested; or

(2) either of the conditions of Section 3544.7(b) of the Act exist; or

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(3) a valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

33280. Withdrawal of a Petition. Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement among the parties.

33290. Informal Conference. The Board may conduct an informal conference for the purposes of clarifying the issues and exploring settlement of the case. No record shall be made at such a conference.

33300. Notice of Hearing. Upon determining that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

33310. Posting Notice of Hearing. Within five calendar days following receipt of the notice of hearing, the employer shall post a copy of the notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit described in the notice are employed. The notice shall remain posted through the date set for the hearing.

33320. Continuances. Except under extraordinary circumstances, no request for a continuance of the hearing will be granted.

33330. Conduct of Hearing.

(a) Hearings shall be conducted by a board agent designated by the Board, except that on a motion of the Board itself, the Board itself or a Board member may act as hearing officer.

(b) Hearings shall be open to the public.

33340. Application To Join Hearing As A Party. The Board may allow an employee organization which did not file a timely request for recognition or intervention to join the hearing as a party provided:

(a) The employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the unit described in the request for recognition or an intervention; and

(b) The application is accompanied by proof of the support of at least one employee in the unit described by the request or intervention; and

(c) The Board determines that the employee organization has a substantial interest in the case and will not unduly impede the proceeding.

33350. Rules of Evidence.

(a) Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. However, immaterial, irrelevant, unreliable, unduly repetitious evidence, or

evidence of little probative value may be excluded. The rules of privilege shall apply.

(b) A party seeking to offer a written document into evidence shall provide a copy of the document for each party to the hearing and for the relevant witness.

33360. Briefs and Oral Argument. Prior to the close of the hearing, the board agent shall rule on any request to make oral argument or to file a written brief. The board agent shall set the time required for the filing of briefs. Any party filing a brief shall file the original and four copies with the board agent and concurrently serve one copy of each other party to the hearing. A statement of service shall be filed with the Board concurrent with the brief.

33370. Decision and Record.

(a) Upon completion of the proceedings, the board agent shall either issue a proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself.

(b) The decision shall be in writing and shall contain a statement of the case, findings of fact, conclusions of law, and a determination of the issues.

33380. Exceptions to Hearing Officer Decision.

(a) A party may file with the Board an original and four copies of a statement of exceptions to the proposed decision, and supporting brief, within seven calendar days after receipt of the proposed decision. The statement of exceptions shall:

(1) State the specific issues of procedure, fact, law or policy to which each exception is taken;

(2) Identify the part of the recommended decision to which each exception is taken;

(3) Designate by page citation the portions of the record relied upon for each exception;

(4) State the grounds for each exception.

(b) No reference shall be made in the statement of exceptions to any matter not contained in the record of the case.

(c) An exception not specifically urged shall be waived.

(d) The party shall serve a copy of the statement and supporting brief upon each party to the proceeding. A statement of service shall be filed with the Board.

(e) The filing of the statement of exceptions submits the case to the Board itself.

33390. Failure to File Exceptions. Unless a party files a timely statement of exceptions to the decision of the board agent with the Board at the headquarters office, the proposed decision shall be final on the date specified therein.

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33400. Response to Exceptions. Within seven calendar days after receipt of the statement of exceptions, any party may file an original and four copies of a response to the statement of exceptions and a brief in support thereof with the Board at the headquarters office. Copies of these documents shall be served concurrently on each party. A statement of service shall be filed with the Board.

33410. Extension of Time. A request for an extension of time within which to file a statement of exceptions or response to the statement of exceptions and briefs shall be in writing and shall be filed with the Board at the headquarters office at least three calendar days before the expiration of the time required for filing. Copies of such request shall be concurrently served upon each party. Extensions of time shall be granted only under extraordinary circumstances.

33420. Oral Argument on Exceptions. A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.

33430. Decision of the Board Itself.

(a) The Board itself may:

(1) Issue a decision based upon the record of the hearing, or

(2) Affirm, modify or reverse the recommended decision, order the record reopened for the taking of further evidence, or take such other action as it considers proper.

(b) The Board shall serve a copy of the decision on each party.

33440. Notice of Decision. The Board shall serve on the employer a notice of decision with the decision of the Board itself or on the date a hearing officer decision is final. The notice shall contain:

(a) The name and address of the employer;

(b) The name and address of each employee organization which was a party to the proceeding;

(c) A description of the unit found to be appropriate by the Board;

(d) A statement indicating whether the decision directs an election;

(e) If the decision directs an election, a statement that any employee organization which was a party to the representation hearing may appear on the ballot if the party demonstrates to the satisfaction of the regional director a 30 percent proof of support in the unit found to be appropriate within 10 workdays following the posting of the decision.

33450. Posting; Notice of Decision. Within two workdays following receipt of the notice of decision, the employer shall post a copy of the notice of decision conspicuously on all employee boards in each facility of the employer in which members of the unit described in the decision are employed. The notice of decision shall remain posted for a minimum of 10 workdays.

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Article 8. Representation Elections

33460. Authority to Conduct Elections. The regional director shall conduct an election when the Board issues a decision directing an election to be conducted or when the regional director approves an agreement for a consent election.

The regional director shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

33470. Consent Election. At any time prior to a representation hearing, the parties may mutually agree upon an appropriate unit and request an election by filing a consent election agreement on forms provided by the Board.

33480. Eligibility to Appear on Ballot. Any employee organization which was a party to the representation hearing may appear on the election ballot provided that during the 10 workday posting period of the notice of Board decision the regional director is satisfied that the organization has evidenced at least 30 percent support in the unit found to be appropriate by the Board.

33490. Notice of Election.

(a) When the regional director has determined which parties shall appear on the ballot in a directed election or upon the approval of a consent election agreement, the regional director shall serve a notice of election on the employer and any employee organization appearing on the ballot.

(b) The notice shall contain a sample ballot, a unit description, and the date, time and place of election. Within two workdays of receipt of the notice of election, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed.

(c) The notice shall remain posted through the date of the election.

33500. Voluntary Recognition. Following the last date of the 10 workday posting period for the notice of a Board decision posted pursuant to Section 33490, if only one organization is eligible to appear on the ballot and the organization has demonstrated proof of majority support in the described unit, the employer may grant voluntary recognition and notify regional director to cancel the election.

33510. Ballot. Ballots shall be prepared by the regional director. The order of voting choices on the ballot shall be determined by agreement of the parties or by the regional director.

33520. Removal of Name From Ballot. Not later than five workdays prior to the date of the scheduled election, an employee organization may file a request in the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. The employee organization shall serve the request on all other parties and file proof of service with the regional office.

33530. List of Voters. At least 10 workdays prior to the date of the election, the employer shall file with the regional office a list containing the names, job

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titles and work locations of all employees included in the unit. The list of names shall be in alphabetical order by school or facility. A copy of the list shall be served concurrently by the employer on each employee organization appearing on the ballot. A statement of service shall be sent to the regional office with the list.

33540. Secret Ballot. All elections shall be conducted by secret ballot under the supervision of the regional director.

33550. Observers. Each party shall be allowed to station an equal number of authorized observers selected from the nonmanagement and nonsupervisory employees of the employer at the polling places during the election to assist in the conduct of the election, to challenge the eligibility of voters, and to verify the tally of ballots. If the unit consists of supervisory employees, the parties may designate supervisors as observers.

33560. Challenges. Any party to the election or a board agent may challenge, for good cause, the eligibility of any person to participate in the election. Persons challenged shall be permitted to cast a challenged ballot which shall be impounded. Challenges shall not be resolved unless they are sufficient in number to affect the results of the election.

33570. Tally of Ballots. At the conclusion of the counting of ballots, the regional director shall furnish a tally of the ballots to each party.

33580. Objections.

(a) Within seven calendar days following the receipt of the tally of ballots, any party to the election may file in the regional office objections to the conduct of the election whether or not any challenged ballots are sufficient in number to affect the results of the election.

(b) The objecting party shall serve a copy of its objections on each party to the election. A statement of service shall be sent to the regional office.

33590. Grounds of Objections. Objections shall 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.

33600. Withdrawal of Objections. Any party may withdraw an objection to an election prior to a final decision by the Board.

33610. Certification of Results of Election or Certification of Exclusive Representative. The regional director shall certify the results of the election or certification of an exclusive representative if:

(a) No timely objections are filed;

(b) The challenged ballots are insufficient in number to affect the results of the election; and

(c) No runoff election is to be held.

33620. Stay of Election. The Board may stay an election pending the resolution of an unfair practice charge relating to the unit petitioned for.

33630. Hearings on 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 objections or challenges shall be resolved through the hearing procedures described in Article 7 of these rules.

33640. Exception to Decision on Objections or Challenges. At the close of the hearing on objections or challenged ballots, exceptions to the board agent's proposed decision may be taken within seven calendar days following receipt of the decision in accordance to the procedures set forth in Sections 33380, 33390, 33400, 33410, and 33420 of these rules and regulations.

33650. 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.

33660. Bar to Conducting Election. The Board shall dismiss a request to conduct a representation election if it determines either that the conditions of Section 3544.7(b) of the Act exist or that a valid representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the request.

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CHAPTER 4. ORGANIZATIONAL SECURITY ARRANGEMENTS

Article 1. Petition for Organizational Security Vote

34000. Petition by Employer.

(a) Pursuant to Section 3546(a) of the Act, an employer may serve written notice on an exclusive representative that a proposed organizational security provision shall be voted upon separately from the remainder of the proposed agreement by the members of the unit.

(b) The notice to the exclusive representative shall be made only after agreement has been reached on an organizational security arrangement and prior to ratification of the entire proposed agreement.

(c) The employer shall concurrently send a copy of the notice to the regional office.

(d) The notice shall contain the following information:

(1) The name, address and county of the employer;

(2) The name and address of the employee organization which is the exclusive representative of the employees in the unit;

(3) A description of the unit:

(4) The proposed organizational security arrangement;

(5) The date agreement was reached on the proposed organizational security arrangement;

(6) The date agreement was reached on the proposed agreement.

34010. Employee Vote.

(a) An election among the employees of an appropriate unit to ratify an organizational security arrangement shall be conducted under procedures established by the Board.

(b) The organizational security arrangement shall become effective as part of the agreement only upon approval of a majority of the employees in the unit.

Article 2. Recision of Organizational Security Arrangement

34020. Employee Petition.

(a) A group of employees in an appropriate unit may file with the regional office a petition to rescind an existing organizational security arrangement pursuant to Section 3546(b) of the Act;

(b) The petition shall contain the following information:

(1) The name, address and county of the employer;

(2) The name and address of the petitioner's representative;

(3) The name and address of the employee organization which is the exclusive representative of the employees in the unit;

(4) A description of the established unit;

(5) The language of the organizational security arrangement sought to be rescinded;

(6) The effective date and the expiration date of the agreement containing the organizational security arrangement sought to be rescinded;

(7) Proof that at least 30 percent of the employees in the unit desire to rescind the existing organizational security arrangement.

(c) The petitioner shall serve a copy of the petition, excluding the proof of at least 30 percent support, on the employer and the incumbent exclusive representative. A statement of service shall be filed with the appropriate regional office.

34030. List of Employees. Within seven calendar days following the filing of the petition to rescind an organizational security arrangement, the employer shall file with the regional office a list containing the names and job titles of the persons employed in the unit described in the petition.

34040. Bar to Recision. The Board shall dismiss any petition to rescind the existing organizational security arrangement if a majority of the employees have voted to approve the arrangement within the 12 months immediately preceding the filing of the petition.

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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. Effective April 1, 1976, the Board adopted emergency regulations relating to the organizational rights of employees, representational rights of employee organizations, recognition of exclusive representatives, and procedural regulations for hearings relating to such activities. Sections of the Statute relating to unfair labor practice activities became operational July 1, 1 Effective July 1, 1976 the Board adopted emergency procedural regulations relati

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(Pursuant to Government Code Section 11380.1)

to the filing and hearing of unfair practice charges. Application of the April 1, 1976 regulations to the practice of employer-employee relations in the public schools has resulted in an urgent need to make certain revisions and modifications to carry out the intent of the enabling statute. Such changes further necessitated the repeal of certain procedural sections of the July 1, 1976 regulations and the adoption of the identical sections without substantive change in hearing procedures common to representational and unfair practice matters in these regulations. Therefore, these regulations are adopted to take effect immediately upon filing with the Secretary of State.

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.

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CERTIFICATE OF COMPLIANCE

(Section 11422.1 of the Government Code)

The Educational Employment Relations Board hereby certifies that said agency complied with the provisions of Sections 11423, 11424, and 11425, Government Code, prior to the adoption of the emergency regulations attached hereto.

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

Charles Cole

Charles Cole
Executive Director

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD
515 CAPITOL MALL, ROOM 200
SACRAMENTO, CA 95814

EDMUND G. BROWN JR., Governor

RESOLUTION #7

The Educational Employment Relations Board adopted the following resolution during a public meeting held on November 2, 1976, in Sacramento, California:

RESOLVED:

1) The Executive Director is the Chief Administrative Officer of the Educational Employment Relations Board.

2) The General Counsel is the Chief Legal Officer of the Educational Employment Relations Board.

3) The Board delegates to the Executive Director all responsibilities for representation matters, including showing of interest, consent elections, directed elections, hearings, organizational security elections, and post-election objections and challenges.

4) The Board delegates to the General Counsel all responsibility for litigation and unfair practices, including informal conferences, formal hearings, dismissal of charges, and compliance.

5) The Executive Director and General Counsel shall implement this policy by further delegation to staff no later than November 15, 1976, and shall submit to the Board itself for approval the policy they have established at its regular meeting of November 16, 1976.

6) Appeal to the Board itself for administrative decisions in representation matters, except where appeals are set forth in Chapters 2 and 3 of the Board's rules, shall be made by filing such appeal with the Executive Director within ten calendar days of service of the action for which review is sought.

7) Appeal to the Board itself from administrative decisions in litigation and unfair practice matters, except where appeals are set forth in Chapters 2 and 5 of the Board's rules, shall be made by filing such appeal with the General Counsel within ten calendar days of service of the action for which review is sought.

8) The intent of this Resolution is to formalize the structure which has previously existed within the Educational Employment Relations Board.

Charles Cole

Charles Cole
Executive Director

LEGAL TERMINOLOGY COMMONLY USED IN ADMINISTRATIVE HEARINGS

The questions decided by a hearing officer fall into three broad areas: questions of law, of fact and of evidence. What is the applicable law? What actually happened? What kind of information will tell me what actually happened? The technical objections raised during the course of taking evidence at a hearing usually relate to this third kind of question.

There is no magic involved. Trial objections are not subtle tricks used to deceive an opponent nor are they meaningless ritual. They are concise ways of saying that the information your opponent is offering or his manner of offering it is not likely to give the hearing officer an honest and accurate view of what really happened.

Usually, an experienced hearing officer expects you to interrupt with the word "objection" and state in one or two words the basis for the objection, i.e. that the question is leading, that it is irrelevant, that it is argumentative, etc.. He will make his ruling and the witness will be required to answer the question or the questioner will have to ask a different question. If the hearing officer wants argument from you on why the question is objectionable, he will ask for it.

What follows is a guide to the technical language used in making these objections. It will not make you a master of the process--only the experience of trying cases will do that--but at least it will demystify the technique somewhat and will give you an introduction to some of the tools you may find helpful in the presentation of evidence.

MOTIONS FOR DISMISSAL:

Motions for dismissal are most commonly raised at one of two points during a hearing. One such point is at the beginning of a case prior to the introduction of any evidence. The other would be at the conclusion of the case presented by a charging party.

In the former situation, a motion to dismiss would be proper in the event that the other party failed to comply with the governing statute. In a hearing on an unfair practice charge under the Educational Employment Relations Act, the failure of the charging party to file a complaint within the time limits set forth in the Act would be one example of adequate basis for a motion to dismiss.

At the conclusion of the charging party's presentation it would be proper to move for dismissal if the case which has been presented--even if true and given its full weight--would not entitle the charging party to the relief which is sought. An example here would be where an employer is charged with an unfair practice, but in the case presented the employer could at most be found to be "guilty" of disappointing the union in its wage expectations.

It should be remembered that representational cases under the EERA are technically not adversary proceedings. In both representational and unfair cases the parties should make known to the hearing officer any alleged basis for dismissal at the prehearing conference. If the hearing officer refuses such a request, you are still entitled to enter the motion in the record of the hearing and free to pursue relief through an appeal.

Badgering: You should protect your witnesses from tactics designed to bully or intimidate. In a law court, an advocate may not even approach the witness stand without first asking the judge's permission. Although administrative hearings are more informal, menacing or threatening a witness either physically or by tone of voice, sarcasm, ridicule or in any other way, is termed badgering the witness and should usually be stopped by the advocate presenting that witness.

Call for a Narrative Answer: If you allow your opponent's witness to ramble on telling his story in response to a general question like, "Tell us what happened", you run the risk that he will say things that are prejudicial and damaging to your side of the case and which you could keep out with a proper objection if you had the chance. The proper objection to stop such a procedure is that the question "calls for a narrative answer."

Speculation or Opinion: Only duly qualified experts on some technical subject are allowed to express their opinions. Other witnesses may tell only what they experienced with one of their senses. An objection that a question calls for speculation or for opinion is proper where the witness is drawing an inference by some extended process or reasoning based on his impressions. For example, it is perfectly proper for the witness to say that the green leafy thing he observed was a tree. However, unless he could be qualified as an expert on trees, he could not say that the leaves he saw were drooping because the tree had elm disease.

OBJECTIONS TO THE FORM OF QUESTION:

Ambiguous or Unintelligible: Simply means that you cannot understand what the question means.

Argumentative: A question that is not asked to get information but is really a comment on the evidence. For example, "That was pretty foolish of you, wasn't it?" is not designed to give the hearing officer any new information but rather it is designed to simply state the questioner's opinion that the witness had acted foolishly. By objecting that such a question is argumentative, you save your witness the possible embarassment of having to try to answer it. You also say to the hearing officer, in effect "that is just his opinion, not evidence." The proper time to state an opinion is at the conclusion of the case, but it is improper during the taking of the testimony.

Asked and Answered: The proper objection where the opponent is not satisfied with the answer he received to his last question and keeps asking the same thing over and over.

A Fact Not in Evidence: A question assumes a fact not in evidence when it includes a statement by the questioner that assumes a certain factual situation exists before there has been any evidence that such facts actually existed. "Did you kill your husband with the gun or knife" would be an improper question before there was any evidence presented that the witness had in fact killed her husband at all. However, after there was some evidence that she had killed her husband, such a question would not be objectionable.

Compound Question: A question is compound if it asks for two or more different pieces of information at the same time. "First tell us what you said and then tell us what he said." If you are in a crucial area of the testimony where you want to be very careful that only technically admissible evidence comes in, you have better control if you chop up the testimony into small units. In the example cited you would object that the question was compound in order to force the opponent to ask two questions, one at a time.

Question too General: The objection that a question is too general is similar to the objection that it calls for a narrative answer.

Leading Question: A question that suggests to the witness the answer that the questioner wants him to make. It is only improper when you are asking questions of your own witness. It is perfectly permissible on cross-examination. A witness should tell about his own experiences as he remembers them, not simply tell a story according to a script that the questioner gives him. Therefore, when it is your own witness, you may not suggest what you want him to say by the form of your question. You may lead the other side's witnesses by saying, "You did so and so, didn't you?" If you asked your own witness a question in that form you would be telling him what to answer and the objection would be that you were leading him.

Misquote of the Witness: A questioner may not misquote a witness by asking him a question that assumes he previously said something other than what he really had said. To avoid putting your witness in the position of having to say, "I didn't say that, I said. . . " you should object that he is being misquoted and force the opponent to reframe his question.

OBJECTIONS TO THE CONTENT OF THE QUESTION:

Irrelevant and Immaterial: The issue of the relevancy and materiality of a question overlap and usually it is enough simply to object that the question is irrelevant. Technically, however, the two words cover different ground. A question is not "material" if it relates to something that has nothing to do with the issues the hearing officer must decide. A question is not relevant if, even though it does relate to a material issue, it would not help decide that issue one way or the other. If your case involves an alleged unfair labor practice at a school, a question about the practices in the steelworker's union might be immaterial. If the issue involves the interpretation of a provision in a contract, the date of signing of the contract would relate to a material issue--the contract--but still not tell the hearing officer anything about the meaning of the provision in question. It would be irrelevant.

Exceeds Scope: In court trials, the rule is that cross-examination is limited to areas covered on direct examination. This does not apply to administrative hearings where the cross-examiner may open up new areas on cross that were not gone into on direct examination. There is no objection that the question exceeds the scope of direct examination here.

Cumulative: A question which simply goes over material that already has been presented once. This is a matter within the hearing officer's discretion. When he reaches the point where he has heard enough on a particular point, he will sustain your objection. He may tell the

opponent he has heard enough on his own motion or he may wait for you to make the objection. This is a matter of the personality of the particular hearing officer and you simply have to watch to see how he wants you to proceed.

Incompetent: A question where the witness has no personal knowledge of a matter he is asked about.

Lack of Foundation: Sometimes, certain preliminary questions have to be asked before a witness can competently testify about a particular fact. Before the contents of a conversation can be told, the witness must tell the time, the place and what persons were present. The proper objection if the witness is asked what was said before he is asked these preliminary questions, is lack of foundation.

Best Evidence: In the case of writings of any kind, the foundation requires either the production of the writing itself, or upon proof that the original is unavailable, a properly authenticated copy or, if no copy is available, a satisfactory explanation why there is no copy and a foundation that shows the witness knew what was in the writing and is capable of remembering it. If the writing or a copy is available, the document itself is the best evidence of what it contains and in that case a witness may not testify as to what it says.

Parol Evidence: The parol evidence rule applies in cases of written contracts intended by the parties to be a complete and final expression of their agreement. If there is such a writing, no evidence may be received outside of the writing itself about what the writing means unless some ambiguity can be shown on the face of the writing itself. Then evidence can be received on that point only.

Hearsay: The general rule is that a witness may tell only what he or she personally observed through one of his or her own senses. A witness cannot tell what was learned at second hand. To do so is to present hearsay evidence, which is generally not admissable in court proceedings.

In administrative hearings hearsay evidence is admissible, but it is generally not sufficient basis for a decision absent corroboration by non-hearsay evidence. However, there are also many exceptions to the hearsay rule which permit the introduction of hearsay evidence, even in formal court proceedings. In such event, one should expect greater weight to be given to the evidence in an administrative hearing. Examples of such formally admissible hearsay evidence are:

Admissions against interest by a party are an exception to the hearsay rule. Note that this applies only to a party to the controversy. If the hearing officer is trying to determine if A in fact attacked B, C's testimony that he heard A say he had done that would be perfectly admissible.

Business records or official governmental records are admissible although they are themselves hearsay, if:

(a) they are made and kept in the regular course of the business,

(b) they were made at or near the time of the events recorded,

(c) the custodian or another qualified witness testifies to the identity and mode of preparation of the records and

(d) the sources of information used and the mode of preparation indicates the records are probably reliable.

Official records are admissible if they are:

(a) entries in public records

(b) made by public employees

(c) at or near the time of the events recorded.

Prior inconsistent statements of the witness are admissible to show that at some earlier time he said something contradictory to what he is saying now. This applies to any witness, not necessarily a party.

CONCLUSION

In conclusion, no one can tell you when to make an objection. That depends on your psychological analysis of the whole situation at the particular time. Never lose sight of your basic task, to make your witnesses and their version of the facts believable and believed.

For example, if your witness is being badgered by your opponent on cross-examination, you might object in order to give him time to collect his thoughts and to slow your opponent down. On the other hand, if your witness is holding up well and keeping his composure despite the bullying tactics of your opponent, you might just want to let him go on just to demonstrate to the hearing officer how completely trustworthy and sure of the truth of the matter your witness is. Only experience will teach you this.*

*The Institute gratefully acknowledges the contribution of Michael Hannon, attorney at law, in compiling this annotated glossary.

E

TAB E

SB 160 IN ACTION

EMERGING EERB DECISIONS

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

SIERRA SANDS UNIFIED SCHOOL DISTRICT, Employer	)	
	)	Case No. LA-R-710
and	)	
	)	EERB Decision No. 2
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, SIERRA SANDS CHAPTER #188, Employee Organization	)	

Appearances: James S. Brian, Attorney (O'Melveny and Myers), for Sierra Sands Unified School District; William D. Dobson, Attorney (California School Employees Association), for California School Employees Association.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

PROCEDURAL HISTORY

On April 1, 1976, California School Employees Association, Chapter 188, filed with the Sierra Sands Unified School District a request for recognition as the exclusive representative of a unit of specified classified employees. It subsequently filed an amended request for recognition as the exclusive representative of a unit of "all classified employees excluding noon duty supervisors and those positions which can lawfully be declared management, confidential, and supervisory." The district notified the Educational Employment Relations Board that it doubted the appropriateness of the unit described by CSEA, Chapter 188: CSEA, Chapter 188, filed a petition with the Board alleging that it had filed a request for recognition with the district and that the request had been denied, and requesting the Board to investigate and to determine the appropriateness of the unit. On August 11, 1976, a formal hearing was held before a Board agent for the purpose of determining the appropriate bargaining unit. This is the first case on "confidential" employees to come before the Board.

ISSUE

The issue in this case is whether or not certain classified employees of the Sierra Sands Unified School District are "confidential employees" within the meaning of the Act, Government Code Section 3540.1(c). The employees and positions designated as "confidential" by the district are the Senior Secretary to the Assistant Superintendent for Educational Services, Senior Account Clerk, Payroll Clerk, Bookkeeper and Account Clerk - Payroll.

With the exception of the five disputed employees, the district and CSEA, Chapter 188, stipulated that the appropriate unit is "all classified employees, excluding all management employees as designated by the district, all supervisory employees, all noon duty aides, all short term and emergency employees and all confidential employees." Stipulated as "confidential" are the following employees:

Superintendent Secretary
Secretarial Aide to the Superintendent
Senior Secretary to the Assistant Superintendent for Business
Senior Secretary to the Assistant Superintendent for
Personnel and Administrative Services
Personnel Technician
Research and Classified Personnel Technician
Secretary to the Assistant Business Manager
School Secretary for Burroughs High School

The Board adopts the stipulations of the parties without inquiry, but is not required to make similar findings in contested cases.

DISCUSSION

Government Code Section 3540.1(c) states that "'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." It is noted further in subsection (j) of the same section that "confidential employees" are not to be considered public school employees for the purposes of employer-employee relations within the meaning of the Act.

Presumably, the Legislature denied certain rights to "confidential" employees for the sole purpose of guaranteeing orderly and equitable progress in the development of employer-employee relations.

The assumption is that the employer should be allowed a small nucleus of individuals who would assist the employer in the development of the employer's positions for the purposes of employer-employee relations. It is further assumed that this nucleus of individuals would be required to keep confidential those matters that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture.

It is further assumed that the denial of representation rights to the employees designated as "confidential" is overshadowed by the greater benefit to be gained by the employer, the employee organizations and the public when a fair and balanced approach to employer-employee relations is guaranteed.

The underlying assumption then, is that the employer, in order to fulfill its statutory role in its employer-employee relations, must be assured of the undivided loyalty of a nucleus of staff designated as "confidential employees".

Senior Secretary

The first employee in issue is the Senior Secretary to the Assistant Superintendent for Educational Services. We conclude that she is a "confidential employee".

The specific duties of the Assistant Superintendent for Educational Services are the development of curriculum and instructional programs and educational pupil personnel services; however, he also serves in three other capacities for the district.

He is a member of the Superintendency Team; he is a member of the Management Team; and he is the chief representative of the Board of Education and the Superintendent on the Consulting Team.

As a result of his participation in any one of these three groups, he would be a crucial element in the employer's negotiation strategy. Inasmuch as he serves not just in one group, but in all three, there can be little doubt that his role is vital in his employer's employer-employee relations process.

As a member of the Superintendency Team, composed of the Superintendent and the other two Assistant Superintendents of the district, he has been involved in developing recommendations of the team to the Board of Education on negotiation matters for both classified and certificated employees.

As a member of the Management Team, composed of all other district administrators and the Board of Education, he also participates in the development of positions to be taken in negotiation matters.

And finally, as chief representative of the Board of Education and the Superintendent on the Consulting Team, he consults with the representatives of the teachers' employee organization on the matters set forth in Section 3543.2 of the Act.

The evidence clearly demonstrates that the Senior Secretary to the Assistant Superintendent for Educational Services handles most of the correspondence, dictation and appointments for the Assistant Superintendent. Additionally, she maintains all of his files and does research on projects

the Assistant Superintendent is developing. She frequently and as a routine matter has access to and handles files which contain materials relating to classified and certificated employees. She also testified that she was aware of the materials regarding classified employees that originated in the Superintendent's office, and that such material and minutes of the Superintendency Team meetings were filed by her in the course of her duties. Since her supervisor also participates in the Management Team and heads up the Consulting Team, it can be concluded from her testimony that she develops and handles materials relevant to meetings of these groups as well. There appears to be no doubt that the Senior Secretary to the Assistant Superintendent of Educational Services regularly has access to or possesses information relating to her employer's employer-employee relations.

Senior Account Clerk, Bookkeeper, Payroll Technician, Account Clerk - Payroll

The Senior Account Clerk, Bookkeeper, Payroll Technician and Account Clerk - Payroll are all supervised by the Assistant Business Manager who has been designated by the governing board as "Management". In the 1975-76 school year, the Assistant Business Manager served on the Meet-and-Confer Team for classified employees. In the current year, 1976-77, he is on the Negotiations Team for both classified and certificated employees. In both capacities he has sometimes been called upon to analyze the cost of district and employee organization bargaining proposals, including district proposals that were not yet placed on the bargaining table.

The Assistant Business Manager indicated that at various times he has asked one of the four individuals in dispute to assist him in analyzing the cost of proposals; however, it is important to note that he can recall requesting the assistance of only the Bookkeeper and the Account Clerk - Payroll in particular instances. In response to a question by district counsel as to whether or not he had made a request of each and every one of them or of one in particular, he responded:

> It's hard to recall and looking back at last year's work, I can't really, I don't think I could really say whether I've asked all four of them at, at different occasions to help me.

In another response to a question from the hearing officer on the same general matter, he answered:

> As I said, last year's meet-and-confer process - to be honest, I can't recall who I have. I've, I had people ask them for specific information or for their assistance.

And further:

> So you try to grab the people that are oh, know how to use the calculator that can know how to read salary schedules and you grab whoever is available.

The Assistant Business Manager did not provide any evidence that convincingly showed that any of the four employees in question, during the regular course of their duties, have access to or possess information relating to their employer's employer-employee relations. Rather, it appears that the Assistant Business Manager chose one or another interchangeably in the preparation of his data for the employer. The mere fact that these four employees are interchangeably called upon to do cost calculations duty because they are equally competent in the use of a calculator hardly suggests that they perform cost evaluations in the regular course of their duties.

Specifically, with reference to the Senior Account Clerk, the Assistant Business Manager did not recall a single instance of requesting her to analyze the cost of proposals. He stated he would have asked her but that she was on vacation at the time he needed the work done. No evidence was provided that she has ever done a cost evaluation. Further, the duty statement for the Senior Account Clerk indicates that her duties primarily involve recording transactions that have already taken place. There was no evidence presented that any of the work performed by this individual was of a "confidential" nature under the meaning of the statute.

With reference to the Bookkeeper, she stated that she had done cost evaluations relating to certificated proposals. The testimony of the Assistant Business Manager, however, demonstrates the casual nature of any such assignments:

> I grabbed the Bookkeeper as I said, the Senior Account Clerk was gone and wasn't able to ask her, and the Accounting Clerk, for the Account Clerk for Payroll to help.

This hardly suggests that the Bookkeeper performed cost proposals for the negotiations in the regular course of her duties. And though there is some reference to the fact that she was told that some of her work was of a

confidential nature, counsel for the district failed to demonstrate that "confidential" in this circumstance meant "confidential" under the terms of the Act.

The situation of the Payroll Technician appears to be equally as weak as that of the Senior Account Clerk and Bookkeeper. The Assistant Business Manager could not recall that he had requested her to perform cost evaluations of proposals in the 1975-76 school year. He further stated that this year he did not ask her assistance because she was too busy. Nothing in the record suggests that in her role of Payroll Technician she regularly performed duties that would be considered "confidential" under the definition of the statute.

And finally, the Account Clerk - Payroll, who did not appear as a witness, was not shown to have performed, in the regular course of her duties, functions that related to her employer's employer-employee relations. In fact, the opposite is true. The Assistant Business Manager testified that he had asked her to do an evaluation three weeks previous to the hearing only because her immediate supervisor, the Senior Account Clerk, was on vacation. This hardly attests to the regular nature of her duties or the confidentiality of her work.

The major duties of the four employees involve record keeping. The Senior Account Clerk schedules, organizes and performs the financial record keeping operations of the district. The Bookkeeper works with the daily accounting processes of the district's business department. The Payroll Technician performs clerical activities involved in the processing of payrolls. The Account Clerk assists in preparing payroll registers for all classified and certificated personnel and maintains all payroll and employment records. The record did not demonstrate that these regular duties of the four employees relate to the employer's employer-employee relations in that the information the employees handle does not expose the employer's positions in negotiations or other matters of employer-employee relations.

Finally, the fact that the four employees may calculate the cost of proposals hardly suggests that they perform cost evaluations giving them information relating to their employer's employer-employee relations. The evidence did not show that any of the four employees did more than simple mechanical cost calculations. The mechanical act of calculating costs does not necessarily provide clerical support personnel with confidential knowledge pertaining to the employer's position on bargaining matters or other information relating to the employer's employer-employee relations.

CONCLUSION

We have considered the cases mentioned by the parties in their briefs. Although there is case history on similar issues under other statutes, there appears to be little reason for the Board to rely on them inasmuch as the statutes to which they refer are not similar enough to our statute to have bearing on this case. The Board finds that the Senior Secretary to the Assistant Superintendent for Educational Services is a "confidential employee" under the terms of the Act. It further finds that the Senior Account Clerk, the Payroll Clerk, the Bookkeeper and the Account Clerk - Payroll, are not "confidential employees" under the terms of the Act, and shall be included in the unit of classified employees petitioned for by CSEA, Chapter 188.

ORDER

The Educational Employment Relations Board directs that:

1. The following unit is appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative of the unit:

Including: All classified employees

Excluding: All management employees as designated by the district
All supervisory employees
All noon duty aides
All short term and emergency employees
All confidential employees

2. The following employee is "confidential" within the meaning of Section 3540.1(c) of the Act:

Senior Secretary to the Assistant Superintendent for Educational Services

3. The following employees are not "confidential" within the meaning of Section 3540.1(c) of the Act:

Senior Account Clerk
Bookkeeper
Payroll Technician
Account Clerk - Payroll

4. If the district does not extend voluntary recognition to CSEA, Chapter 188, within twenty-one (21) calendar days following the date of this decision, the regional director shall conduct an election to determine whether or not CSEA, Chapter 188, shall be the exclusive representative of the appropriate unit.

by: Raymond J. Gonzales, Member

Reginald Alleyne, Chairman

Date: October 14, 1976

Jerilou H. Cossack, Member, dissenting in part.

I concur with the decision of my colleagues that the Senior Secretary for Educational Services is a confidential employee within the meaning of the Act. However, I disagree with the implicit assumption of the majority that "employer-employee relations" is limited to those matters within the area of collective bargaining or labor relations. While I do not agree with the majority's assumption, I do agree that the record in this case does not provide a basis for a broader finding. The mere access to bare piecemeal statistical information, none of which was established to relate to confidential employer-employee relations matters, is insufficient to establish confiential status. Assuming, however, that the definition is restricted as in the majority opinion, I conclude that there is ample justification to hold one of the remaining employees as confidential. The record establishes that in prior years management has relied on at least one of the four disputed employees to actually perform the costing out of various negotiating proposals. The fact that no one of these employees regularly performed this function but rather that any one of them might be called upon, in no way diminishes management's need to have someone to perform this task. To preclude management from this type of assistance because it has failed to confer the function on one particular individual at a time when it had no reason to do so, in my view, runs contrary to the obvious intent of the legislature in carving out a category of confidential persons. Given management's articulated preference for using the Senior Account Clerk for this function, I would find that person to be a confidential employee.

Jerilou H. Cossack, Member

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

PITTSBURG UNIFIED SCHOOL DISTRICT, Employer and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, PITTSBURG CHAPTER #44, Employee Organization and PITTSBURG FEDERATION OF TEACHERS, LOCAL 2001, AFT, AFL-CIO, Employee Organization	)	Case No. SF-R-106 EERB Decision No. 3

Appearances: Breon, Galgani and Godino by Keith V. Breon, Attorney, for Pittsburg Unified School District; Robert L. Blake, Attorney, for California School Employees Association, Pittsburg Chapter #44; Van Bourg, Allen, Weinberg & Roger by Stewart Weinberg, Attorney, for Pittsburg Federation of Teachers, Local 2001, AFT, AFL-CIO.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

Pursuant to a Request for Recognition filed by California School Employees Association, Pittsburg Chapter #44 (CSEA); a Notice of Request for Recognition posted by Pittsburg Unified School District (Employer); an Intervention and an Amended Intervention filed by Pittsburg Federation of Teachers, Local 2001. AFT, AFL-CIO (PFT); a Notice of Employer Decision dated May 5, 1976; and a Petition for Hearing filed by the Employer on May 25, 1976, a hearing was held on July 22, 1976 before a hearing officer of the Educational Employment Relations Board at the Employer's premises.

CSEA requested the following unit:

> All the district's classified employees. . ., which shall include but not limited to the following major grouping of jobs: Food Services, Clerical and Secretarial, Operations and Maintenance to include custodial/maintenance/grounds, Instructional Aides (paraprofessional), and Transportation. The unit excludes noon duty supervisors (by whatever name) when the job description does not authorize or require the performance of duties other than playground supervision for the purpose of providing certificated personnel with a duty-free lunch period, and those positions which can lawfully be declared management, confidential, and supervisory.

PFT's amended intervention described the following unit:

> All paraprofessionals: aides, Community Liaison (secondary schools) and Pupil Services Liaison.

At the hearing, following PFT clarification that it intended to include noon-duty supervisors in its intervention, CSEA amended its position to include noon-duty supervisors in its requested unit. The employer contends that the appropriate unit in this case is consonant with that originally requested by CSEA, and one which excludes noon-duty supervisors.

The district is comprised of 11 schools: 1 preschool, 6 elementary schools, 2 junior high schools, 1 high school, and 1 adult education school. It has an average daily attendance of approximately 6,200 students. There are approximately 141 employees whose unit placement is undisputed.[1/] There are approximately 227 persons who are classified as aides whose unit placement is in dispute: 220 teacher aides, including 197 instructional aides, 3 health aides, 8 clerical aides, 3 campus aides, 6 community aides, and 3 shop instructional aides; 3 campus supervisor aides (high school); 1 pupil service liaison; and 3 secondary school community liaisons. There are 16 noon-duty supervisors whose inclusion or exclusion in the unit is in dispute.

1/ Account Clerk; Account Clerk-Intermediate; Account Clerk-Senior; Bus Driver; Carpenter; Composer Technician; Custodian; Custodian-Auditorium; Deliveryman/Gardener; Duplicating Center Technician; Electrician; Equipment Serviceman; Food Service Assistant; Food Service Assistant-Senior; Grounds Equipment Operator; Groundsman Gardener; Groundsman Stadium; Groundsman-Stadium Assistant; Library Assistant; Library Assistant-Senior; Maintenanceman-Senior; Painter; Plumber; Pool Operator/Gardener; Purchasing Clerk; Receptionist; School Secretary; School Secretary-Intermediate; School Secretary-Senior; Secretary; Secretary-Federal Projects; Typist Clerk; Typist Clerk-Senior and Housekeeper.

All of the classifications in dispute, with the exception of pupil services liaison, are assigned to a school site or a cluster of school sites. In contrast, most of the classified employees are not assigned to a school site but rather work out of a central location. Instructional aides and shop instructional aides work directly in the classroom assisting in the instruction and supervision of students. Health aides assist nurses with the examination of students and with the instruction of health in the classroom and maintain health records. Community aides work with elementary and junior high students and parents outside the classroom and enforce disciplinary and safety rules in building and campus grounds; campus aides perform similar functions at the high school level. Campus supervisor aides observe and assist students and patrol high school grounds. Secondary school community liaison persons work with parents, counselors, deans and students to resolve problems; they regularly visit student homes. Pupil services liaison persons provide counseling services for parents and students through the auspices of the employer's pupil services office. Noon-duty supervisors are responsible for elementary school yard and cafeteria supervision; their job description is virtually identical to that of campus aides. Finally, clerical aides perform various standard clerical functions. Unlike all other aide classifications, the job requirements for a clerical aide do not include the ability to work effectively or cooperatively with students; further, the testimony established that they do not have any extensive interaction with students.

The employer has three separate salary schedules for classified employees: the aide schedule, the noon-duty supervisor schedule and the regular classified schedule. The aide schedule, pursuant to which campus, community, health, instructional, shop instructional, campus supervisor and clerical aides are paid, contains four steps based on longevity of employment with the employer. There are seven classes within each step; each class is based on increasing increments of educational credit. The aides paid on this schedule are the only classified employees who receive premium pay based on increased educational credit. The noon-duty supervisor schedule contains four steps. The four steps are identical with the four steps at class I rates of the aide schedule. The classified schedule, pursuant to which other employees, including secondary school community liaison and pupil service liaison persons are paid, contains fifty-two ranges. Each job classification is assigned a range. There are five steps within each range; each step reflects an additional year of service with the district.

All aides, including secondary school community liaison and pupil service liaison persons, are employed for ten months a year, whereas the overwhelming majority of other

classified employees work twelve months a year. Two-thirds of the aides work three hours per day; the vast majority of the classified employees work an eight hour day. All employees sought to be represented, except noon-duty supervisors, receive district paid health and welfare benefits if they work a minimum of four hours per day. Thus, aides who work three hours per day do not receive these benefits. All employees sought to be represented, except noon-duty supervisors, receive sick and vacation leave on a prorata basis and receive permanent status at the end of a six month probationary period. Upon attaining permanent status employees cannot be terminated except for disciplinary reasons or lack of funds. Approximately eighty percent of all aides are categorically funded by state or federal money; aides comprise most, but not all, of the classified employees who are categorically funded. Categorically funded employees are given notice annually that they are employed subject to continued funding.

All classified employees are hired pursuant to district administered testing and placement on an eligibility list. Noon-duty supervisors are interviewed and selected by individual principals. Aides, by and large, are also selected by individual principals, sometimes in conjunction with the classroom teacher to whom they will be assigned. All aides and noon-duty supervisors are under the direct supervision of the principal or chief administrative person at the school site.

Aides who wish to become part of the regular classified service must take the requisite examination along with all other applicants. Where possible, incumbent employees are given some preference over outside applicants for available jobs. Although there has been some minimal transfer from aide classifications to regular classified positions, primarily clerical, the overwhelming majority of transfers and promotions within regular classified positions have not included aides. None of the current aides have transferred from the regular classified service to aide classifications.

Finally, the Employer's records indicate that as of May 31, 1976, of the 227 aides then employed, 30 had executed payroll dues deductions on behalf of PFT, 81 on behalf of CSEA, 1 on behalf of both organizations, and 115 persons had executed no payroll dues deduction authorizations. Furthermore, both CSEA and PFT have, in the past, met with and represented various aides in their relations with the employer.

DISCUSSION

The substantive issues thus presented are first, whether the only appropriate unit is an overall classified unit; second, whether paraprofessionals constitute a

separate appropriate unit; third, whether noon-duty supervisors are employees within the meaning of the Act.

In reaching our conclusions with respect to the appropriateness of any unit, we are required by Section 3545 of the Act, to base our decision on three factors: (1) The community of interest between and among the employees; (2) The established practices of the employees including, among other things, the extent to which such employees belong to the same employee organization; and (3) The effect of the size of the unit on the efficient operation of the school district.

We conclude, based on the record before us, that a single overall unit is not appropriate in this case. Rather, we find that a separate unit of paraprofessionals is appropriate.

In reaching this conclusion we find merit in the PFT's basic argument that the paraprofessional persons whom it seeks to represent are distinguishable from other classified employees since their primary functions involve dealing directly with students either at the instructional or disciplinary level, whereas other classified employees are primarily charged with providing a physical environment for students. We would, however, exclude clerical aides from the paraprofessional unit. In addition, we note that all but one of these paraprofessional employees, unlike most of the remaining classified employees, are regularly assigned to a specific school site or cluster of sites; that the spearate salary schedule for aides includes additional compensation for educational experience, unlike the regular classified salary schedule; that these persons uniformly work no more than ten months a year while most regular classified employees work a twelve-month year; that they are supervised differently and by different persons than the regular classified employees; and that they are selected for employment by different persons than regular classified employees.

We conclude, however, that clerical aides, while meeting some of the above enumerated criteria, perform tasks identical to those of other classified clerical personnel under identical supervision and share an identical working environment. They are, therefore, more appropriately included in the regular classified unit.

All parties at the hearing stipulated that the employees sought to be represented, presumably including noon-duty supervisors, are employees within the meaning of the Act. While we have ennunciated a general proposition that we do not intend to look beyond the stipulations of the parties before us unless such stipulations

are clearly contrary to the provisions of the Act or clearly contravene the rights guaranteed by the Act, we do not base our decision in the instant case solely on that stipulation. Unlike the Employer, we do not view Section 13581 of the Education Code, which specifically excludes "Noon Time Playground Supervisors" from the classified service, as precluding employees so designated from the exercise of rights guaranteed in this Act. In our view, this section of the Education Code must be considered in conjunction with the definition of employee contained in the Act. Employee is defined in the Act as "...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." This definition is not limited in any way to certificated employees or employees in the classified service.

Noon-duty supervisors work a set number of hours per day on a regularly scheduled basis during the course of the school year. There is not one scintilla of evidence in this record to indicate that these employees only report to work when needed and called upon by the Employer. Thus, as regularly scheduled part-time employees who work on a regular basis, they share a community of interest with full-time employees who perform similar duties. The job description of noon-duty supervisor is virtually identical to that of campus aide; the pay schedule is identical to the first step of the Class I rates of the aide schedule; and like other paraprofessional employees they are selected by the principal. We further note that they, like the vast majority of other paraprofessional employees who do not work a sufficient number of hours to qualify, are excluded from fringe benefit coverage. We conclude, therefore, that noon-duty supervisors should be included in the paraprofessional unit.

While the Act requires us to take cognizance of the extent to which employees belong to the same employee organization, we do not find any evidence in this case which would warrant a conclusion that a paraprofessional unit is inappropriate. Nor do we find any evidence in this record to indicate that a separate paraprofessional unit would disrupt the efficient operation of the Employer.

ORDER

The Educational Employment Relations Board directs that:

1. The following units are appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative:

Unit A

Included: All classified employees, including clerical aides.

Excluded: All other employees, including instructional aides, health aides, campus aides, community aides, campus supervisor aides (high school), pupil service liaison, secondary school community liaison, noon duty supervisors, managerial employees, supervisory employees, and confidential employees.

Unit B

Included: Instructional aides, health aides, campus aides, community aides, shop instructional aides, campus supervisor aides (high school), pupil service liaison, secondary school community liaison, and noon duty supervisors.

Excluded: All other employees, including managerial employees, supervisory employees, and confidential employees.

2. The employee organizations have the 10 workday posting period of the Notice of Decision to demonstrate to the Regional Director at least 30 percent support in the above units. At the end of the posting period, should more than one employee organization qualify for the ballot or if only one employee organization qualified for the ballot and the employer has not granted voluntary recognition, the Regional Director shall conduct an election.

By: Jerilou H. Cossack, Member

Reginald Alleyne, Chairman

Date: October 14, 1976

Raymond J. Gonzales, Member, dissenting in part:

I agree with the majority in finding that those classified employees within an aide category form an appropriate unit separate and apart from other classified employees of the school district. Unlike the majority, however, I would exclude noon duty supervisors on three grounds. First, I am not entirely satisfied that the majority opinion demonstrates that noon duty supervisors are public school employees[2] within the meaning of Government

[2] The majority incorrectly accepts the stipulation among the parties that the employees sought to be represented are employees within the meaning of the Act. A careful examination of the record reveals that the stipulation was entered into the record at a time when it was unknown that PFT intended to amend its request to include noon duty supervisors within its proposed unit. In any event, it is well established that a stipulation as to jurisdiction of a tribunal is not binding. 1 Witkin, California Procedure, "Jurisdiction", Section 10, pages 534-36 (2d Ed. 1971).

Code section 3540 et. seq., and therefore entitled to representation rights. Second, even assuming for the purpose of argument that noon duty supervisors as a class are public school employees within the meaning of the Act, this record clearly demonstrates that there exists such an insufficient community of interest between noon duty supervisors and classified employees of the Pittsburg Unified School District as to result in a very tenuous employment relationship, almost casual in nature, between the noon duty supervisors and the district. Third, there is no evidence indicating whether either of the organizations seeking to represent them in their proposed units has included them in their past bargaining endeavors with the district or, in fact, interacted with these employees in any manner.

The majority has failed to address adequately those considerations which militate for a finding that noon duty supervisors are not employees under Government Code section 3540 et. seq. Government Code section 3540.1 (j), which defines a "public school employee" does not expressly exclude those employees which are not part of the classified service as provided for in section 13581 of the Education Code. However, I would submit that a reasonable interpretation of this section in light of the purpose underlying the enactment of Education Code section 13581, as well as, the language found in other parts of the Act, particularly section 3545, both argue for the implicit exclusion of noon duty supervisors from any bargaining rights under the Act. Further, although the definition of a public school employee as stated in section 3540.1(j) of the Act expressly excludes certain individuals, for example, public officials either elected or Governor appointed, that list of exclusions cannot be assumed to include every conceivable type of individual who receives a pay warrant from a public school employer. Temporary professionals, education consultants, crossing guards, and legal counsel, are not specifically excluded, yet there are numerous instances where they too have received remuneration from public school employers.

Section 13581 of the Education Code provides in pertinent part as follows:

> The governing board of any school district shall employ persons for positions not requiring certification qualifications. The governing board shall, except where Article 5 (commencing at Section 13701) of this chapter of Section 13756 applies, classify all such employees and positions. The employees and positions shall be known as the classified service. Substitute and short-term employees, employed and paid for less than 75

> percent of a school year, shall not be a part of the classified service. Part-time playground positions, apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service...."

This section implements a classified service system for school districts not incorporating the merit system. Excluded from that scheme along with several other types of persons employed by a school district are "part-time playground positions", herein noon duty supervisors. It should be noted that no one disputes the fact that noon duty supervisors fill part-time playground positions; it is clear from the record that they patrol and supervise throughout the school premises at the elementary level.

A review of case law interpreting that section indicates that the legislative purpose in establishing a classified service for certain employees of a school district was to provide those persons with a guarantee of job protection. See California School Employees Association v. Willits Unified School District 243 Cal. App. 2d 776, 52 Cal. Rptr. 765 (1966) and California School Employees Association v. Sunnyvale Elementary School District 36 Cal. App. 3d 46, 111 Cal. Rptr. 433 (1973). As stated by the court in California School Employees Association v. Willits Unified School District, supra at 784-85:

> Not only, however, are there statutory protections for the pupils, but there are also statutory regulations in favor of school district employees which would not be applicable to employees of a contractor, for example, Education Code Sections 13651.1 (leaves of absence and accumulation thereof), 13651.1 (leave for funeral of relative). These are but a few examples. The entire statutory scheme of protection of employees applies to those who are classified under Section 13581. (Emphasis added)

Similarly, in California School Employees Association v. Sunnyvale Elementary School District, supra at 63-64, the court stated:

> Also section 13581 is intended to strengthen the position of non-certified school employees by classifying them. (Citation omitted) Certain rights are afforded them pursuant to sections 13580-13655 of the Education Code. Persons outside the school system, especially temporary professionals, would not be in need of such protections. (Emphasis added)

Consequently, those provisions of the Education Code, sections 13580 et. seq., provide only classified employees various rights relating to job security and employment benefits.

While it has never been judicially determined why part-time playground positions are excluded from the classified service under Education Code section 13581, I would submit the reason lies in the tenuous nature of their employment. The fact that they are exempted along with other employees who themselves are engaged in a temporary employment relationship with the school district suggests that the employment relationship of persons employed in part-time playground positions were exempted for similar reasons. Further, the fact that the Legislature has not seen fit to change the exempt status of the part-time playground position since the enactment of Education Code section 13581 in 1959 suggests that that position continues to exemplify the same temporary employment characteristics.

Since employees exempted under Education Code section 13581 are not afforded the protections of classified employment, presumably due to the tentative nature of their employment relationship with the school district, to now require that negotiations over wages, hours, and working conditions of the district's career employees be burdened with the same considerations for a category of employees whose interests the Legislature has found to be less than critical, does not appear justified. Considering the financial pressures that the educational system now faces, we should not lightly ignore the policy established by the Legislature and endorsed by the courts in interpreting Education Code section 13581.

Another compelling reason for excluding noon duty supervisors as not being employees within the meaning of the Act is that no where in the language of the Act is reference made to any category of employees of the type to which the noon duty supervisors belong. This omission is particularly obvious in that section of the Act pertaining to the appropriateness of the unit issue, Government Code section 3545. Here, the Legislature only addressed itself to certain categories of employees who are neither "management" nor "confidential". Therefore, I would argue that the Legislature's concern with only "supervisory", "certificated", and "classified" employees in the context of giving direction to the Board on matters regarding what does or does not constitute an appropriate unit, implies that the Legislature intended that only employees within those categories are employees who may constitute an appropriate unit for

negotiating purposes under Government Code section 3545. On the basis of the foregoing the only conclusion that can be reached is that there are no provisions in the Act for dealing with any employee who is neither "supervisory", "certificated", or "classified" in determining what constitutes an appropriate unit.

A second basis for my dissenting in part from the majority opinion is that even assuming that noon duty supervisors as a class are not precluded from the exercise of rights guaranteed under the Act, it is clearly evident from the record that because of the tentative nature of their employment relationship with the Pittsburg Unified School District, there exists no community of interest with the district's classified employees.

As noted by the majority, section 3545 of the Government Code requires the Board to determine the appropriateness of any unit on the basis of a tripartite test, one element of which requires a showing of community of interest between and among the employees. Although the Board is not bound by decisions in other jurisdictions or decisions under the National Labor Relations Act, application of the "community of interest" criterion has resulted over the years in a consideration of a number of variables inherent in the employer-employee relationship, the ultimate goal being that there be "a 'common enough aspect of employment' to make it reasonable for the employees to negotiate jointly." L.C. Shaw, and R.T. Clark, Jr., "Determination of Appropriate Bargaining Units in the Public Sector: Legal and Practical Problems," 51 Oregon L. Rev. 152 (1971). Albeit, the majority has considered a number of factors relevant to whether a community of interest exists between and among the employees in this case, I cannot agree with the analysis and conclusion reached by them regarding the noon duty supervisors.

First, regarding the job description of noon duty supervisors, I am not convinced that they perform responsibilities which can properly be characterized as "paraprofessional" in nature. Their level of interaction with the students at the elementary level is much less than that of the aides, whom I believe more appropriately can be termed, "paraprofessional". Unlike the majority of the aides, noon duty supervisors do not participate in instructional or counseling services for the students. Nor are they required for purposes of advancement to pursue educational goals that would enhance their ability to relate to students in the instructional or counseling areas. And further, unlike the aides, they are not required to take in-service training during the period of their employment.

The work schedule of noon duty supervisors also provides another distinctive basis for finding that they do not share a community of interest with classified

employees in the district. While they, like the aides, may be ten-month employees, the fact that they substitute for certificated personnel during the noon recess suggests that they work less than two hours per day. The record clearly demonstrates that the minimum number of hours worked by any employees in the classified service is three hours. Further, the fact that noon duty supervisors work only primarily in the noon recess suggests that there is little opportunity for interaction with classified personnel. Further, because of their limited work assignment, noon duty supervisors are the only employees who are totally excluded from any employee benefits. And even though some aides are excluded from health and dental benefits, they are entitled to sick leave and vacation leave on a prorated basis. Lastly, all classified staff have reemployment rights; noon duty supervisors have none.

The school district has also apparently established a different pay schedule for noon duty supervisors. It is not clear from the record, however, whether the schedule for noon duty supervisors referred to by the majority is, in fact, utilized by the district. The record only notes that it is a recommended schedule for noon duty supervisors. The only point that is clearly uncontradicted regarding earnings of the noon duty supervisors is that they are paid on an hourly basis. Assuming that the district does utilize the recommended schedule, the top of the pay schedule for them is a third lower than the top of the aide pay schedule. Further, as noted above, only aides are given credit for initial placement and advancement purposes on the pay schedule for college units taken and completed.

The work conditions of noon duty supervisors greatly differ from those of the classified personnel. Noon duty supervisors can never attain permanency status in the school district. Further, while a few aides have moved to the regular classified service, there has been no similar mobility for the noon duty supervisors. Additionally, disciplinary procedures differ for noon duty supervisors. Unlike classified employees, they are not entitled to a notice of disciplinary action. Consequently, they may be fired at will by the principal of the school at which they work. On the other hand, all classified employees are protected by certain grievance procedures.

Final noteworthy distinctions between noon duty supervisors and classified staff are the circumstances under which they are hired and the line of supervision under which they fall. The majority has given the impression that aides are hired solely by the principal at a particular school site. While the

statement is accurate insofar as noon duty supervisors are concerned, a careful reading of the record indicates that aides must be tested and interviewed by district administrators before qualifying for an eligibility list. The principal must then limit his selection to persons on the list. Noon duty supervisors are not tested nor must they qualify for any list. They, in fact, are selected by the principal. Additionally, it appears that noon duty supervisors are solely accountable to the principal. The line of supervision ceases there. This is not so with the classified service. For example, the ultimate responsibility for the aides rests at the district administrative level such as with the Coordinator of Aides.

In sum, on the basis of the community of interest test, I would not include noon duty supervisors within either of the two units designated by the majority. Rather, viewing their job status in total, their employment relationship is much too tenuous since there is no measure of permanency in the position of noon duty supervisors.

The final argument upon which I would exclude noon duty supervisors from any bargaining unit is that neither employee organization has in the past sought to represent them in matters pertaining to employer-employee relations. Nor is there any evidence that either employee organization has attempted to meet and interact with these employees to any extent. Hence, there is no evidence of past bargaining history regarding these employees.

On the basis of the foregoing, I would hold that noon duty supervisors should not be included within any bargaining unit of employees sought by the employee organizations herein. Further, in my opinion there is too little in the record to find as the majority has found that noon duty supervisors should be included. Of the two hundred and thirty six pages of transcript in this case, only two and a half pages pertain to noon duty supervisors. And of these two and a half pages, the most significant testimony, regarding working conditions, has its basis in Education Code sections 13580 et. seq., provisions which themselves are already judicially noticeable and have been relied upon to some extent in this dissent. In this regard, I am concerned that persons appearing before this Board might be less than encouraged to prepare adequately for the presentation of their cases, knowing that the majority, in this instance, has been willing to base its decision regarding noon duty supervisors on relatively sparse evidence in the record.

Raymond J. Gonzales, Member

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

SWEETWATER UNION HIGH SCHOOL DISTRICT, Employer	)	
and	)	Case Nos. LA-R-27 LA-R-28 LA-R-696
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 471, Employee Organization	)	
and	)	EERB Decision No. 4
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 102, AFL-CIO, Employee Organization	)	

Appearances: Brown & Conradi by Gerald A. Conradi, Attorney, for Sweetwater Union High School District; William D. Dobson, Attorney, for California School Employees Association, Sweetwater Chapter 471; Anthony Butka, Research Director, Los Angeles County Employees Association, for Service Employees International Union, Local 102, AFL-CIO.

Before: Alleyne, Chairman, Gonzales and Cossack, Members.

OPINION

PROCEDURAL HISTORY

On April 1, 1976, Service Employees International Union, Local 102 (SEIU), filed with Sweetwater Union High School District a request for recognition as the exclusive representative of two units it described as a custodial-gardening unit and a transportation unit. Subsequently, California School Employees Association, Sweetwater Chapter 471 (CSEA), filed an intervention seeking recognition as the exclusive representative of a unit it described as including all classified employees except bus drivers. SEIU next filed an intervention to the broad unit seeking recognition as the exclusive representative of two additional units it described as an instructional aides unit and an office-technical and business services unit. All petitions and interventions excluded noon-duty supervisors and managerial, supervisory and confidential employees from the

requested units. On July 26 and 27, 1976, a formal unit determination hearing was held before an agent of the Educational Employment Relations Board.

ISSUES

The first issue addressed at the hearing was whether any of the units proposed by SEIU and CSEA constitutes an appropriate unit for negotiating purposes under the Act.

The other two issues presented at the hearing were whether head custodians and school secretaries are "supervisors" within the meaning of the Act.

DISCUSSION

Appropriate Units

The Sweetwater Union High School District has an average daily attendance of approximately 29,227 students in grades 7 through 12 and adult school. There are 11 sites on which are distributed nine junior high schools, seven senior high schools, three adult education schools and one continuation school.[1] The district employs approximately 672 classified employees. The district's salary schedule for classified employees for administrative purposes divides the classified employees into nine job groups which are: accounting/purchasing/distribution, secretarial-clerical, duplications, instructional assistance, cafeteria, custodial, gardening, transportation, and maintenance. It is from a rearrangement of these groups that SEIU forms its six suggested units. The unit proposed by CSEA includes all of the nine salary schedule groups, excepting the job positions of bus driver I and II which are in the "transportation" group.

Government Code Section 3545(a) provides:

> 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.

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[1]While the record is silent with respect to these facts, we take official notice of the information reported in the Annual Apportionments Report, California State Department of Education, Form J-19 (July 1976).

Relying principally upon past practices, CSEA takes the position that "historically...the CSEA has made salary proposals and handled the grievances for all classified employees...." SEIU emphasizes what it views as the absence of a community of interest among the employees in the comprehensive unit requested by CSEA, and stresses the presence of a separate community of interest among the employees within each of the four units it seeks.

Applying the statutory criteria to the facts of this case, we conclude that appropriate bargaining units in this case are (1) an instructional aides (para-professional) unit, (2) an office-technical and business services unit, and (3) a unit, which for ease of reference we shall describe as an operations-support services unit, consisting of all other classified employees. None of these units shall include noon-duty supervisors, for which neither party petitioned, nor managerial, supervisory or confidential employees.

I

We find that the broad unit excepting bus drivers requested by CSEA is not an appropriate unit. The evidence does not require a decision in favor of this unit on the basis of established practices, community of interest or efficient operation of the school district.

CSEA presented evidence that before the Act became effective, it submitted wage proposals to the employer's Board of Trustees which covered all classified employees. CSEA also showed that it had filed or was prepared to file grievances on behalf of any classified employee. At the time of the hearing CSEA had approximately 135 members among the classified employees. SEIU indicated that it is an employee organization recognized by the district, that it had filed a wage proposal with the district for fiscal year 1976/77, and that "Local 102 [does not have] any dues-paying members that are employees of the district."

The described activities of CSEA and SEIU are "established practices" within the meaning of the Act. They occurred before passage of the Act and under

the authority of the Winton Act.[2] The Winton Act enabled employee organizations as the district "may designate" pursuant to "reasonable rules and regulations" to "meet and confer" with the public school employer.[3] It did not set forth criteria or procedures for determining appropriate units. On this record we do not know whether the rules and regulations adopted by the employer required an employee organization to represent all classified employees as a precondition to becoming a designated representative. Because of the unspecified and possibly unilateral nature of the unit designation procedure which existed in this district under the Winton Act, in determining appropriate negotiating units in this case we give little weight to "established practices" as they relate to the composition of the unit represented under the authority of that Act.

The following discussions regarding the appropriateness of separate instructional aides and office-technical and business services units will reveal the lack of a community of interest among the employees of the proposed broad unit.

No evidence was presented in this case regarding the efficient operation of the school district; however, this criterion will be addressed after discussion of the community of interest criterion.

II

The petition of SEIU for a unit of instructional aides includes in the unit the following job positions: instrumental music specialist, graphic art technician, aide to assistant principal, career center technician, community aide-adult

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[2]The Winton Act, Education Code Sections 13080-13090, governed employer-employee relations in public schools before passage of Government Code Sections 3545 et. seq.

[3]Government Code Sections 13085 and 13087.

school, cultural awareness facilitator, school-community relations facilitator, vocational workshop technician, instructional aide, and instructional aide-clerical. These job positions are identical to those listed in the employer's salary schedule in the job grouping titled "instructional assistance," except SEIU deleted the job position of public information specialist from its petition apparently because the district has designated the position as confidential. The unit would consist of approximately 124 employees.

We decide in this case, as we decided in Pittsburg Unified School District,[4] that the instructional aides, excepting the instructional aides-clerical, are a separate appropriate unit based upon a separate and distinct community of interest.

In the present case, the job specifications of instructional aides show that, unlike other classified employees, their primary duties involve directly assisting in the educational development of students. Further, they are required to have at least a twelfth-grade education, generally including or supplemented by courses in the special area of education in which the aide is involved. Instructional aides are compensated 90 to 95 percent by categorical funding. Their retention as an employee depends upon the continuation of the categorical funding. With very few exceptions, the instructional aides work regular hours from 7:30 a.m. to 4:00 p.m. They have a line of supervision distinct from other classified employees in that an aide is directly supervised by a classroom or resource teacher, next by the Principal and the coordinator of the categorically funded program through which they are employed, and ultimately by the District Superintendent and Board of Trustees.

The unique characteristics of the instructional aide employees relating to work function, educational requirements, compensation, work hours and supervision combine to establish that a separate instructional aides unit is appropriate.

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[4]EERB Decision No. 3, October 14, 1976.

As in Pittsburg, supra, we do not include the instructional aide-clerical in the instructional aides unit. The district job specification for the instructional aide-clerical states that while such employees may occasionally perform paraprofessional instructional activities, their major work function is to perform clerical tasks. Because, unlike all other aide classifications, the instructional aide-clerical is not generally required to interact with or work effectively and cooperatively with students and basically performs a clerical function, this job position is not included in the instructional aides unit.

III

The petition of SEIU for an office-technical and business services unit includes in the unit the following job positions: assistant purchasing agent, accountant, payroll supervisor, accounting technician, buyer, accountant clerk, financial clerk, secretary IV, secretary III, school secretary, secretary II, school clerk III/attendance, school clerk III/library technician, school clerk III/registrar, secretary I, typist clerk III, school clerk II, typist clerk II, school clerk I, PABX operator/receptionist, typist clerk I, duplicating equipment operator II, duplications production technician and duplicating equipment operator I. These job positions are identical to those listed in the employer's salary schedule in the job grouping titled "accounting/purchasing/distribution", "secretarial-clerical" and "duplications", except the job positions of warehouseman and deliveryman which are in the "accounting/purchasing/distribution" group were not included in the petition. The unit would consist of approximately 200 employees.

We find that the office-technical and business services employees constitute a separate appropriate unit based upon a separate and distinct community of interest.

The functions of the office-technical and business services employees are generally to perform clerical and recordkeeping work rather than physical labor. These employees are required to type, operate business machines, maintain files

and keep records. They are required to have at least a twelfth-grade education, sometimes supplemented by additional courses in business or financial record-keeping. Approximately 85 to 90 percent of these employees are compensated through the general fund. The remainder are largely categorically funded. The office-technical and business services employees work regular hours from 7:30 a.m. to 4:00 p.m. They work in offices at the school sites or the district office. There are three lines of supervision for office-technical and business services employees which are distinct from the other classified employees, each culminating with the District Superintendent and the Board of Trustees. Clerical workers at the school sites report to the school Principal. Administrative clerks working at the district office in categorically-funded programs report to the program coordinator, the general director of the categorically-funded programs and the Assistant Superintendent of Instructional Services. Administrative clerks working at the district office for various departments report to the particular department head and the Business Manager.

The unique characteristics of the office-technical and business services employees relating to work function, educational requirements, compensation, work hours and supervision combine to establish that a separate office-technical and business services unit is appropriate.

In addition to the job positions listed in the petition filed by SEIU, this unit shall contain employees in the job position of instructional aide-clerical. As in Pittsburg, supra, we find that the job function of these employees is more akin to that of the employees in the office-technical and business services unit than those in the instructional aides unit.

IV

The classified employees remaining after the establishment of the instructional aides unit and the office-technical and business services unit are also the subject of the petitions filed by SEIU and CSEA. The petition filed by SEIU for a transportation unit requests the representation of the following

job positions: maintenance mechanic II, foreman/heavy and light duty trans., transportation foreman and driver training vehicle operations, maintenance mechanic II/heavy and light duty trans., bus driver II, and bus driver I. These job positions are identical to those listed in the employer's salary schedule in the job grouping titled "transportation." This proposed unit would consist of approximately 30 employees. The petition filed by SEIU for a custodial-gardening unit requests representation of the following job positions: head custodian, lead custodian, pool attendant, locker room attendant/custodian, custodian, gardener, and gardener-groundsman. These job positions are identical to those listed in the employer's salary schedule in the job groupings titled "custodial" and "gardening." This proposed unit would consist of approximately 146 employees.

The other classified employees were the subject of the petition filed by CSEA for the broad unit. Their job positions are those listed in the employer's salary schedule in the job groupings of "cafeteria" and "maintenance." Also included are the warehouseman and deliveryman listed on the salary schedule in the "accounting/purchasing/distribution" job group. In addition to the warehouseman and deliveryman, the job positions involved are the following: cafeteria warehouse/deliveryman, cafeteria manager, baker, cook, cafeteria assistant, maintenance mechanic II foreman/plumbing, maintenance mechanic I foreman/carpentry, maintenance mechanic I foreman/painting, maintenance mechanic II leadman/audio-visual repair, maintenance mechanic II/audio-visual repairman, maintenance mechanic II/electrician, maintenance mechanic II/heating and air conditioning repairman, maintenance mechanic II/machinist, maintenance mechanic II/office machine repairman, maintenance mechanic II/plumber, maintenance mechanic I/carpentry, maintenance mechanic I/heavy equipment operator, maintenance mechanic I/locksmith, maintenance mechanic I/metal fabricator, maintenance mechanic I/painter, general maintenance man, and utilityman. There are approximately 97 cafeteria employees and 38 maintenance employees.

We find that neither the transportation unit nor the custodial-gardening unit suggested by SEIU is an appropriate separate unit in that neither has a community

of interest separate and distinct from the other classified employees who remain after the establishment of the instructional aides and office-technical and business services unit.

The transportation employees have some characteristics which distinguish them from the other remaining employees. The bus drivers are required to possess a class II drivers license, medical certificate, California Highway Patrol school bus driver certificate, and a first aide certificate. They work a split shift from 7:30 a.m. to 9:30 a.m. and 1:30 p.m. to 4:00 p.m. They report to the transportation yard for work assignments. We find that these several distinguishing characteristics are not sufficient to establish a separate community of interest or separate appropriate unit for the transportation employees because, taken together, these characteristics do not substantially distinguish the transportation employees from the other remaining classified employees.

The custodial and gardening employees are different from the other remaining employees in that most of the custodians work the evening shift from 2:30 p.m. to 11:30 p.m. and they report to their assigned school site for work assignments. We find that these distinguishing characteristics are not sufficient to establish a separate community of interest or separate appropriate unit for the custodial-gardening employees because, taken together, they do not substantially distinguish the custodial and gardening employees from the other remaining classified employees.

The employees who remain after the establishment of the instructional aides and office-technical and business services units are the transportation, custodial-gardening, cafeteria and maintenance employees, and the warehouseman and deliveryman. Together they have a community of interest. The primary work functions of these employees all involve providing a proper physical environment and support services for students. They drive and repair buses, prepare meals for students, handle instructional equipment and supplies, and perform janitorial, gardening and general maintenance work. Generally they are not required to have

a twelfth-grade education. All except a possible few of these employees work full-time. The custodial-gardening and maintenance employees work a twelve-month year and the great majority of the transportation and cafeteria employees work a ten-month year. The maintenance employees work from 8:00 a.m. to 4:30 p.m. and report to the maintenance yard for work assignments. The cafeteria employees work from 9:00 a.m. to 1:00 p.m. and report to work at their respective school sites. The cafeteria employees and warehouseman are the only employees who do not report to work at a location from which they are disbursed to various other locations for the actual performance of their job duties. While the cafeteria employees are compensated through a separate cafeteria account, all other employees are compensated wholly through the district's general fund. The transportation and cafeteria employees are compensated on an hourly basis while the custodial-gardening and maintenance employees are compensated on a monthly basis. All employees work three or more hours per day and therefore receive employer-paid fringe benefits.

Additionally, the transportation, maintenance and cafeteria employees are supervised on a common scheme respectively by the Supervisor of Transportation, Supervisor of Maintenance and Supervisor of Food Services who each report directly to the Business Manager who in turn reports to the District Superintendent and Board of Trustees. The custodians and gardeners are supervised by the school Principal as well as the Supervisor of Maintenance, and again ultimately by the Business Manager, District Superintendent and Board of Trustees.

The district job specification indicates that the job function of the warehouseman is to be in charge of the district warehouse including supervising the receipt, storage, issuance and delivery of materials, stock and equipment. The district job specification indicates that the job function of the deliveryman is to receive, store and deliver school equipment and supplies, and to load, unload and drive vehicles used in delivering supplies and equipment.

In this case, because neither of the two units proposed by SEIU is separately appropriate, and because the custodial-gardening, transportation, cafeteria, maintenance workers, warehouseman and deliveryman together have a substantial community of interest, they are appropriately grouped in a single negotiating unit which we shall refer to as an operations-support services unit.

V

While no evidence was introduced at the hearing regarding the efficient operation of the school district, we have been mindful of the operation of this criterion with regard to the unit determination in this case. It is a legitimate concern that excessive fragmentation of negotiating units may burden an employer with multiple negotiating processes and postures and with a variety of negotiated agreements difficult to administer because their provisions differ. Inter-organization competition may increase demands made upon the employer by an employee organization. The employer may have to give the benefits of the "best" settlement in each area of negotiations to all employees to avoid employee unrest or the administrative inconvenience caused by multiple agreements.[5]

On the other hand, while a single unit is theoretically the most conducive to the efficient operation of the school district, it is only one of three criteria for unit determination set forth in Section 3545(a). Further, the purpose of the Act is stated in Government Code Section 3540 as follows:

> 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....

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[5] Two articles which discuss the problem of the fragmentation of negotiating units are: Shaw & Clark. "Determination of Appropriate Bargaining Units in the Public Sector: Legal and Practical Problems," 51 Oregon Law Review 152 at 173 (1971); Rock. "The Appropriate Unit Question in the Public Services: The Problem of Proliferation," 67 Michigan Law Review 1001 (1969).

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

In this case, we find that the criterion of efficient operation of the employer should not preclude the establishment of the three units suggested by the community of interest criterion. This is especially so because no evidence was presented regarding efficiency of operations. As we stated previously, established practices have also been accorded little weight. The appropriate classified employee bargaining units are an instructional aides (paraprofessional) unit, an office-technical and business services unit and an operations-support services unit.

Supervisory Issues

Government Code Section 3540.1(m) defines a supervisory employee as follows:

> "Supervisory employee" means any employee, regardless of job description, having 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, 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.

This section of the Act is written in the disjunctive; therefore, an employee need not possess all of the enumerated functions or duties to be a supervisor. The performance of any one of the enumerated actions or the effective power to recommend such action is sufficient to make one a supervisor within the meaning of the Act.[6]

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[6] Ohio Power Co. v. NLRB, 176 F. 2d 385, 23 LRRM 1242 (C.A. 6, 1949), cert. denied, 388 U.S. 899.

In Fire Fighters Union v. City of Vallejo,[7] the California Supreme Court held that, in the interpretation of language in a California statute, cognizance should be taken of the decisions of the National Labor Relations Board interpreting identical or similar language in the Labor Management Relations Act.[8] In reaching our decision, we have considered the decisions of the NLRB and other state public employment relations boards.

The definition of supervisor in Section 3540.1(m) of the Act is virtually identical to the definition contained in Section 2(11) of the Labor Management Relations Act. However, other provisions of the Act regarding supervisors are significantly different from the LMRA. Specifically, Section 2(3) of the LMRA excludes supervisors from the definition of "employee" and therefore from the protection of the LMRA with regard to collective bargaining rights. On the other hand, Section 3540.1(j) of the Act does not exclude supervisors from the definition of "employee" and Section 3545(b)(2) allows supervisors to be represented in a negotiating unit separate from the rank and file employees they supervise.

This statutory scheme recognizes that public and private sector supervisors differ in the nature of the authority they possess. In the public school districts, decisions regarding hiring, firing, discipline and salaries of employees are generally ultimately reserved for decision-makers far removed from the employee's immediate supervision. This type of authority and the different California statutory scheme lend themselves to a broader construction of the definition of supervisor contained in the Act.

Head Custodians

The Board finds that the 18 head custodians in dispute are supervisory employees within the meaning of the Act and should be excluded from the operations-support services unit.

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[7] 12 Cal. 3d 608 (1974).

[8] 29 U.S.C. 152 (11). The Labor Management Relations Act amended the National Labor Relations Act in 1947.

The record demonstrates that head custodians have the authority to effectively recommend the hiring of custodians. The Assistant Superintendent of Personnel Services testified that it is generally the practice to have the head custodian become involved in the selection of the custodial staff. A Principal testified that the initial hiring interview is conducted by himself and thereafter the applicant talks with the head custodian who gives a recommendation to the Principal. When asked if he placed a considerable amount of weight on the recommendation of the head custodian, the Principal stated "At this point he's never been wrong, so I would assume that he does quite well with it." Another head custodian stated that he and the Principal interview all applicants for custodial positions, that he discusses his recommendation with the Principal and the Principal follows his recommendation "99% of the time."

Since the head custodians' recommendations concerning hiring are consistently solicited and adopted by higher authority, we conclude that they have the authority to effectively recommend the hiring of custodians.[9]

Head custodians also have the authority to assign and direct the work of other employees, even though during the regular school year head custodians work the day shift from 6:30 a.m. to 3:00 p.m. while most of the employees under their supervision work the swing shift from 2:30 p.m. to 11:00 p.m. At the beginning of the school year, each head custodian allocates regular work assignments to the members of the custodial crew. Although these assignments are forwarded through the Principal to the district business office, they are rarely altered by higher authority. A Principal testified that he has changed

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[9] Chambersburg Area School District, 6 PPER 144, 146 (1975); Warren Rural Electric Cooperative Co., Inc., 209 NLRB 325, 85 LRRM 1340 (1974).

the assignments made by a head custodian only two or three times in 17 years. During the summer all custodians work together during the day and the head custodian personally oversees the work of the custodial crew. The work assignments are varied during this period and are assigned on a daily basis by the head custodian.

When special events occur during the school year, the head custodian alters the regular assignments and assign specific additional tasks. These changes are usually made without consulting the Principal. Early each morning, each head custodian makes a round of inspection. If an evening crew member has not properly performed a task, the head custodian directs the evening crew chief or the crew member to correct the propblem. It is the initial responsibility of the head custodian to ensure that improperly performed work is corrected; he consultes with the Principal in the rare circumstance when he is unable to handle a problem himself.

The NLRB and other state public employee relations boards have consistently held that the authority to regularly inspect the work of others and to direct others to correct improperly performed work constitutes responsible direction of other employees in the performance of their work.[10]

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[10] Howard Johnson Company, 201 NLRB 376 (1973).

In Pennsylvania see: Bellefonte Area School District, 3 PPER 60 (1973); Northern Tioga School District, 3 PPER 107 (1973); Troy Area School District, 3 PPER 155 (1975); Forest Area School District, 3 PPER 264 (1974); Huntingdon Area School District, 5 PPER 33 (1974); Hatboro Horsham School District, 6 PPER 121 (1975); Chambersburg Area School District, 6 PPER 144 (1975); Claysburg-Kimmel School District, 6 PPER 309 (1975). In Indiana see: Merrilville Community School Corp. 1 IPER 60 (1976).

In view of the authority of head custodians in the Sweetwater Unified School District to assign the work of the custodial crews, to inspect the work on a daily basis, and to direct necessary corrective action, we conclude that this authority constitutes responsible direction of other employees in the performance of their work.

The record amply demonstrates that head custodians perform several of the activities enumerated in Section 3540.1(m) of the Act and are, therefore, supervisors within the meaning of the Act.

School Secretaries

The Board finds that the 22 school secretaries in dispute are not supervisors within the meaning of the Act and should be included in the office-technical and business services unit.

School secretaries serve as secretaries to school Principals. They prepare communications, make appointments, maintain files, take dictation and do other tasks normally associated with secretarial functions.

The district presented evidence that the duties of a particular school secretary further involve the occasional assignment of work to approximately eight other clerical employees. In these instances, the original assignment is made by the Principal to the school secretary who then delegates all or part of the assignment to whomever of the office clerical staff has the lightest workload and is available to lend assistance. While she estimated that she devotes 10 percent of her time to what she terms "coordinating," her Principal testified that, "In general, however, day-to-day operation does not require the school secretary to make specific work assignments." This school secretary also stated that she does not generally inspect the completed work of the other clerical employees. Finally, both she and her Principal agreed that she has been only unofficially designated by him as his "office manager" because he felt a need for his particular school

secretary to "coordinate the efforts of the office." A second school secretary, who described her work as typical of that performed by approximately ten other school secretaries she knows, testified that she has never assigned work to other employees nor prepared work schedules.

The assignments made by the secretary who was designated "office manager" were made in a routine manner because she acted simply as a conduit in the transfer of work from the Principal to the most available clerical worker and because she did not inspect the work product. Thus, the evidence shows that, at best, some school secretaries only occasionally make routine assignments to other employees in a manner not requiring the exercise of independent judgment.

The district also argues that school secretaries are supervisors because of their role in the hiring, evaluation and dismissal of other clerical employees. But the record shows that school secretaries have only minimal if any participation in these functions.

The Principal who testified stated that his school secretary sits with him at job interviews for clerical employees and assists him in his decision to hire a particular person. It was not established that any other school secretaries participate in the hiring process in any manner.

While the same Principal testified that his school secretary assists him in his evaluation of the office clerical staff, the other school secretary testified that she has "never" been involved in the evaluation process.

The only evidence regarding dismissal authority is the testimony of a Principal that on one occasion his school secretary recommended the discharge of a clerical employee. He did not follow the recommendation.

No evidence was presented regarding the other activities referenced in Section 3540.1(m).

The evidence does not demonstrate that the school secretaries perform any of the activities enumerated in Section 3540.1(m) of the Act and they are therefore not supervisors within the meaning of the Act.

ORDER

The Educational Employment Relations Board directs that:

1. The following units are appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative:

Instructional aides (paraprofessional) unit

Included: Instructional assistance employees.

Excluded: Instructional aides-clerical, public information specialist, and all other employees, including managerial, supervisory and confidential employees.

Office-technical and business services unit

Included: Accounting/purchasing/distribution, secretarial-clerical, and duplications employees, and instructional aides-clerical.

Excluded: Warehouseman, deliveryman, and all other employees, including managerial, supervisory and confidential employees.

Operations-support unit

Included: Transportation, custodial, gardening, maintenance, and cafeteria employees, and warehouseman and deliveryman.

Excluded: All other employees, including managerial, supervisory and confidential employees.

2. The head custodians are "supervisors" within the meaning of Section 3540.1(m) of the Act.

3. The school secretaries are not "supervisors" within the meaning of Section 3540.1(m) of the Act.

4. The employee organizations have the 10 workday posting period of the Notice of Decision in which to demonstrate to the Regional Director at least 30 percent support in the above units. The Regional Director shall conduct an election at the end of the posting period if (1) more than one employee organization qualifies for the ballot, or (2) if only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Raymond J. Gonzales, Member

Jerilou H. Cossack, Member

Date: November 23, 1976

Alleyne, Chairman, concurring in part, dissenting in part:

I agree with the conclusion of the majority that the three units described in the Board Order are appropriate, and with most of the factual analysis made in support of that finding. I do not fully agree with the manner in which they apply the applicable statutory-unit criteria. I dissent from the majority's conclusion that the Head Custodians in the Sweetwater Union High School District are supervisors within the meaning of the Act.

The Appropriate Units

I believe that this precedent-setting decision should contain more than it does in the way of guidance for future parties involved with issues like the appropriate-unit issue presented here. That is the limited basis for this concurring opinion on the appropriate-unit issue.

The standard set forth in Government Code Section 3545(a) requires consideration of traditional community-of-interest criteria plus consideration of the effect of unit size on the efficiency of the employer's operations, and the extent to which employees belong to the same employee organization. These are broadly worded standards, purposely made so by the Legislature in order to cast upon this Board and the courts in California the task of giving the unit criteria meaning in concrete cases. One of the criteria, community of interest, has been the subject of interpretation in private sector cases involving the National Labor Relations Act (NLRA). It has also been interpreted by state appellate courts in California in cases arising under various newly emerging public sector labor laws in this State. The extent to which employees organize, as used as a criterion in Government Code Section 3545(a), is more difficult to understand since the NLRA and most public sector enactments contain the contrary mandate that extent of organization not be considered as a criterion in unit determination cases. Thus, it is not possible to rely upon cases interpreting those statutes for guidance in interpreting that aspect of Government Code Section 3545(a). The effect of unit size on the efficient operation of a school district is clear in expressing the general intention of the Legislature to avoid excessive unit fragmentation, but to what extent and how this should be weighed as a factor in conjunction with the other unit criteria, and how generally each criterion should relate to the others cannot be known except in the context of real cases. With that, I reach the conclusion reached by my colleagues through the following route.

Excessive unit fragmentation affects efficiency by burdening employers with a multiplicity of bargaining postures, each of which might arise at different times as different agreements are negotiated and administered at different times, possibly with different unions involved. On the other hand, a unit that is excessively large and insufficiently divided may have employees

with conflicting employment interests which are adverse to their interest in effective representation. These conflicts stem from such matters as different methods of compensation, types of working conditions, lines of supervision, job qualifications, and differing degrees of integration or interchange with the work functions of other employees.

In the context of our Act, I view community of interest among groups of employees as an absence of conflicting employment interests adverse to effective representation. That is how I read the NLRB's decision in Kalamazoo Paper Box Corp.[1], which I regard as the most instructive case decided on the subject of community of interest.

I think that in each case requiring application of the broad unit criteria contained in Government Code Section 3545, we must attempt to fashion a proper balance between the harmful effects on an employer of excessive unit fragmentation and the harmful effects on employees and the organizations attempting to represent them of a large and insufficiently divided negotiating unit or units.

In this case, I view the proposed CSEA unit of all classified employees, excluding bus drivers, as one that would produce conflicting interests between and among certain classes of classified employees. We decided in Pittsburg Unified School District[2], that paraprofessionals have a definable community of interest, distinct from other classified employees, and I join the majority opinion to the extent that it relies upon the Pittsburg decision as a precedent on the matter of Instructional Aides. Similar cases are appropriately decided in a similar manner.

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1. 136 NLRB 134, 49 LRRM 1715 (1962).

2. EERB Decision No. 3, Case No. SF-R-106.

Another potential for conflicting interests can be seen in this case by comparing the employment conditions of the office-technical and the remaining classified employees. I agree that the office-technical group is an appropriate separate unit. But rather than stop, as does the majority opinion, with a recitation of the differences in employment conditions and a conclusion that the separate unit is accordingly appropriate, I would move from the noted differences in employment conditions to a conclusion that those differences are such that the inclusion of the office-technical group with other groups of employees would produce conflicting bargaining interests and impede the bargaining process.

I would similarly treat the remaining issue of whether the food services, custodial-gardening, transportation and maintenance groups should be combined in one unit or separated into two or more units, in concluding as we all conclude here, that those groups together are an appropriate unit.

I believe that once having considered the community-of-interest standard, the kinds of conclusions reached on application of that standard should be regarded as tentative and contingent upon consideration of the efficiency-of-operation and extent-of-organization criterion contained in Government Code Section 3545(a). The statute does not expressly require or expressly allow that approach. But very few of the critical issues before the Board are capable of being resolved on the basis of a plain-meaning and literal reading of the Act. To consider the efficiency-of-operation criterion first would require the determination initially of the broadest of the statutory criteria, and, accordingly, the one least capable of being resolved by comparing facts in existing decisional law.[3] That being the case, the

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3. Unlike the NLRA, most public sector statutes contain the efficiency-of-operations criterion. See e.g., affecting educational personnel, Section 10 of the Indiana Educational Employment Relations Act, GERR RF-104, 51:2315.

analysis ought to begin with the criterion most capable of being resolved on the basis of comparatively well-articulated general standards, such as those found in the Kalamazoo[4] decision. Further, I think the analysis should begin with the standard most likely to be the subject of another case with identical facts. When the standard more capable of being subjected to well-reasoned analysis is applied first, it might well be that community-of-interest findings dictate a number of units so small that no one would seriously regard impairment of efficiency as a problem. It would then become unnecessary to apply the broader and more difficult criterion. This does not mean that community of interest ought to be given more weight than efficiency-of-operations; rather, I view this approach as a methodological one. It might well be that community-of-interest, when viewed alone, could require a large number of units, a number so large that it would not meet the efficiency test.[5]

In this case, neither the District nor any other party has asked us to consider the efficiency-of-operations criterion. Thus we are wholly justified in finding that the result reached on application of the community-of-interest criterion need not be changed on the basis of the efficiency-of-operations standard.

In considering "past history" as required by the "established-practices" portion of Government Code Section 3545(a), I conclude, as does the majority that history predating this Act should be given little weight.

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4. Supra Note 1.

5. The public sector statutes containing a criterion on excessive fragmentation were no doubt enacted with such extreme examples in mind as New York City's 200 separate units, some with two employees, in the late fifties; seventy-eight units in Detroit, a proportionately higher rate of proliferation than New York City's; and fifty units in Los Angeles County. See Rock, The Appropriate Unit Question In The Public Service, 67 Mich. L. Rev. 1001.

In reaching that conclusion, I would take my analysis further than the majority's. I agree with my colleagues that the Winton Act contained no procedures for determining an appropriate unit. But there are further reasons why Winton Act history should be given little weight in our unit determination cases.

In Grasko v. Los Angeles City Board of Education,[6] the California Court of Appeal, in holding invalid a negotiated agreement between the Los Angeles City Board of Education and an employee organization, held that under the Winton Act "The Legislature has determined that binding written contracts or agreements have no place in the field of labor relations between a public school employer and its employees."

Also, no exclusive-representative concept, as now recognized under the present Act, existed for education personnel. On the basis of all of these differences between the law before and after passage of the Act, I would give little weight to "established practices" predating this Act.

The extent to which employees belong to the same employee organization was not argued and for that reason is not properly before us as a criterion to be considered.

I would thus conclude on this reasoning that the finding required by the community-of-interest criterion, that three units are appropriate in this case, stands unrebutted following application of the remaining criteria, and that accordingly the three designated units are appropriate within the meaning of Section 3545 of the Act.

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6. 31 Cal. App. 3d 290, 107 Cal. Rptr. 334, 82 LRRM 3098 (1973).

The Head Custodians

I respectfully dissent from the majority conclusion that within the meaning of Government Code Section 3540.1(m), Head Custodians are supervisors and hence ineligible for inclusion in any of the units we find appropriate.

Government Code Section 3545 excludes "supervisory employees" from units containing nonsupervisory employees and also prohibits an employee organization from representing a unit of supervisors who supervise employees also represented by the employee organization. Government Code Section 3540.1(m) which is an almost exact replica of Section 2(11) of the National Labor Relations Act,[7] defines a supervisory employee as follows:

> "Supervisory employee" means any employee, regardless of job description, having 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, 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. (Emphasis added.)

The statutory requirement that a supervisor exercise one of the enumerated criteria in a manner that is not "routine" or "clerical" and in a manner requiring the use of independent judgment is inescapably an essential part of the definition. I think the majority decision gives it virtually no effect.

Generally, the eighteen Head Custodians employed at various schools in the District work from 6:30 a.m. to 3:00 p.m., while the no more than five custodians each purportedly supervises work from 2:30 p.m. to 11:00 p.m. . Thus, for most of their shift, the Head Custodians have no one to direct. From 6:30 a.m. until 2:30 p.m., the Head Custodians do maintenance and repair work, a fact not mentioned in the majority opinion. Head Custodians strip and wax floors, install pencil sharpeners, repair desks, put in windows,

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7. 29 U.S.C. Sec. 152 (11).

unplug stopped sewers, and turn on air conditioners. The Head Custodian at Castlepark High School testified that with the exception of about one-and-a-half hours a day he spends inspecting the work of the kind just described, he spends all his time doing maintenance and repair work. The Head Custodian at Montgomery Junior High School testified that he spends the "bulk of his time" making repairs. The Principal at Bonita Vista Junior High School described the Head Custodian's limited inspection work as the inspection of "the kitchen area, the cooking area in the cafeteria, the dining area, all lavatories and the /physical education/ facilities for cleanliness... at the beginning of every day." The Head Custodian at Castlepark High School testified that if he saw that some of the night custodial work had not been done properly, and "if it wasn't too big a job", that, "I'd go ahead and do it right and then when the man came I'd let him know about it." The Gardener's shift and the shift of the Head Custodian are almost the same, but the Bonita Vista Junior High School Principal testified that the Head Custodian does not supervise the Gardener or inspect the Gardener's work.

The flaw that I see in the reasoning of the majority is the failure to acknowledge the undisputably routine nature of the work performed by custodians. This would not be relevant if the Head Custodians had the power to hire, discharge, discipline or reward custodians or adjust their grievances, or effectively make recommendations in those areas. But the School District does not seriously argue that the Head Custodians fit those portions of the supervisory criteria. The principal argument of the School District is that the Head Custodians meet the "assign" and "direct" criteria in the supervisory definition, and to the extent that the District relies on other supervisory criteria, the District's arguments fail.

I think that if assigned or directed work is routine, then the assignment and direction of that work is routine. It is undisputed that Custodians sweep, mop, wash and seal floors; they vacuum rugs and carpets, dust, wash and polish furniture and woodwork; they empty and clean wastebaskets; they wash windows, walls, sinks and fountains; they clean restrooms, sweep sidewalks, pick up papers, wash cafeteria and eating areas, polish metal-work, fill towel and soap dispensers and replenish supplies; they replace light bulbs and tubes, clean blackboards and trays, turn lights on or off, lock doors, windows and gates and assist in moving, arranging and setting up furniture and equipment for special events; they stack and store furniture and equipment and assist in vandalism prevention and reporting. Their job description shows further that no experience is required to qualify for a custodial position and that custodians should have the ability to "work without immediate supervision."

I believe that this is routine work and that the direction of this routine work could accordingly be nothing more than routine. Thus, on the direction of work, the argument in favor of a supervisory status for Head Custodians suffers from evidence of the routine nature of the directed work as well as the brief daily period during which the Head Custodians have any opportunity to direct the custodians in any way. The same reasoning applies to the argument that the Head Custodians assign work in a manner that is not routine.

Once a year, at the beginning of each school year, custodial assignments are made. According to one Principal, the assignments, once set up by the Head Custodian on the basis of a map and custodial needs outlined in a manual prepared by the School District, are sent to the School District offices for approval, which, not surprisingly, is routinely granted every year.

At one school, a Head Custodian's participation in evaluations is limited to a first-step written evaluation on a form. The Principal also completes an evaluation form. On completion of the two forms, the Head Custodian and the Principal meet, discuss their respective evaluations, and prepare a final evaluation which is signed by the Principal. The Head Custodian at another school testified that he completed an evaluation form and submitted it to the Principal, who did not discuss it with him. At still another school in the District, the Bonita Vista Junior High School, the Head Custodian, according to the Principal's testimony, does not prepare a written evaluation of employees. The Principal and the Head Custodian discuss the custodians' strong and weak points, but it is clear that the Principal decides what to place on the evaluation form which he prepares in writing and signs.

In any event, the evaluation of employees is not, alone, indicative of a supervisory status. In some cases it might suggest the power to discipline employees, but this record is lacking in evidence that Head Custodians discipline employees or even effectively recommend that employees be disciplined. The power to evaluate or to play a role with the Principal in the evaluation process, may suggest the power to direct employees. But the evidence recited establishes that the Head Custodians have no effective power to direct.

A secondary argument of the School District is that Head Custodians supervise by playing a role in the hiring process. The School District brief states that the Head Custodian "participates in the hiring process by interviewing prospective employees and by informing the Principal of the most desirable candidate." But the Bonita Vista Junior High School Principal testified that the Principal conducts the initial hiring

interview, following which the applicant is "invited" to visit with the Head Custodian for an interview, which is followed by a recommendation from the Head Custodian to the Principal, who in turn makes a recommendation to the Board of Trustees of the School District through the District Personnel Office.

It seems evident that in hiring, it is the Principal who makes an effective recommendation to the School District, and that the Head Custodian is twice-removed from the final hiring authority in the School District. That is why, in answer to the single question of whether he hired employees, the Head Custodian at Montgomery Junior High School testified: "No sir." The same witness was asked whether he was ever involved in the dismissal of an employee. He answer, "Yes, I have been." He then described the one occasion of his involvement, as follows:

> Well, this guy was not getting his job done and he told the Principal one day that he should be the one sitting behind the desk instead of polishing it. The Principal was very unhappy so the next day this guy asked me, he said, "How many weeks do I have to give you notice ... to quit?" I said, "Give me two minutes is all you've got to give me." So he said, "I'm giving you notice that I'm quitting." I said, "Well let's go to the Principal's office", and it didn't take the Principal long to get rid of him.

That is the sole evidence on the power of Head Custodians to dismiss or effectively recommend dismissal.

I

In Fire Fighters Union v. City of Vallejo,[8] the California Supreme Court held that it is appropriate to use National Labor Relations Act precedents as a guide in interpreting analagous or identical language in state labor legislation. In Los Angeles Metropolitan Transit Authority v.

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8. 12 Cal. 3d 608, 617, 87 LRRM 2453 (1974).

Brotherhood of R.R. Trainmen,[9] the California Supreme Court said:

> When legislation has been judicially construed and a subsequent statute on the same or an analagous subject is framed in the identical language, it will ordinarily be presumed that the Legislature intended that the language as used in the later enactment would be given a like interpretation. This rule is applicable to state statutes which are patterned after federal statutes... (Emphasis added.)

In Alameda County Assistant Public Defenders Association v. County of Alameda,[10] and Santa Clara County District Attorney Investigators Association v. County of Santa Clara,[11] the California Court of Appeal relied on NLRB precedents in unit-determination cases.

While Vallejo alone might well be read as suggesting but not requiring that NLRA precedents be followed in analagous-language cases, it seems clear that the combination of (1) Vallejo, (2) Los Angeles Metropolitan Transit Authority, and (3) the just cited Alameda County and Santa Clara County cases compels the following conclusion: When California state labor legislation is identical to the National Labor Relations Act, federal decisional law on the subject is in substance and effect the law in California.

Indeed, none of the parties in this case regards this as a matter in dispute. They all rely upon NLRA precedents, though not surprisingly they interpret the precedents in a different manner. Because the courts of our own state have chosen to identify the federal law they will follow in analagous-language unit determination cases, I regard the Pennsylvania and Indiana Public Employment Relations Board cases relied upon by the majority opinion (to the limited extent that they are not distinguishable), as not relevant to the question at hand. Once the federal decisional law is applied,

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9. 54 Cal. 2d 684, 46 LRRM 3065, 3066 (1960).
10. 33 C.A. 3d 825, 109 Cal. Rptr. 392, 84 LRRM 2237 (1973).
11. 51 C.A. 3d 255, 124 Cal. Rptr. 115, 90 LRRM 3192 (1975).

it seems clear that we are obligated to conclude that the Head Custodians in this case are not supervisors within the meaning of the Act.

II

In NLRB v. Swift & Company,[12] the plant clerks alleged to be supervisors told employees where to place and when to move certain products. It was held that those activities were of a "merely routine or clerical nature" within the meaning of Section 2(11) of the National Labor Relations Act.[13] In Teamsters Local 626 (Quality Meat Packing Company),[14] the NLRB decided that an employee who spends practically all of his time doing "rank-and-file work" and whose directions to other employees involved no more than "a more experienced employee overseeing and facilitating the work of less experienced employees", is not a supervisor within the meaning of the NLRA. In that case, part of the employee's duties as a Loading Foreman consisted of seeing that other employees properly loaded beef onto trucks for delivery. In Laborers and Hod Carriers Local No. 341,[15] the NLRB held that a Labor Foreman was not a supervisor because he had no authority to hire or fire, played no part in grievance matters, and spent a great portion of his day working along side other members of his crew. His job of "lining out" work and overseeing its performance was held to be routine in nature and one not requiring any significant exercise of independent judgment. In NLRB v. Dunkirk Motor Inn,[16] an Assistant Housekeeper in a motel spent approximately one half of each

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12. 240 F. 2d 65, 39 LRRM 2278 (C.A. 9, 1957). Accord, NLRB v. Parma Water Lifter Co., 211 F. 2d 258, 261, 33 LRRM 2810 (C.A. 9, 1954), NLRB v. Osbrink, 218 F. 2d 341, 35 LRRM 2291 (C.A. 9, 1954).

13. 29 U.S.C. Sec. 152 (11).

14. 224 NLRB No. 40, 92 LRRM 1295 (1976).

15. 223 NLRB No. 143, 92 LRRM 1112 (1976).

16. 524 F. 2d 663, 90 LRRM 2961 (C.A. 2, 1975).

working day reviewing the manner in which the rooms on one of the motel's two floors had been cleaned by a staff of eight to fourteen maids. The United States Court of Appeals said:

> The limited discretion involved in this task is routine in nature and insufficient, standing alone, to convert an employee into a supervisor... And while /the Assistant Housekeeper/ possessed the 'authority to order maids to take corrective action,' that authority was sparingly exercised. More frequently, Hancock would herself remedy any deficiencies which she found... Furthermore, Hancock lacked the power to discipline an individual maid whose performance was unsatisfactory. Her sole remedy...was to relay the information to the housekeeper... Such referral decisions hardly suggest a finding of supervisory status.

In that case, the Court of Appeals reversed a panel of the NLRB on the supervisory status of the Assistant Housekeeper. In so doing, I think the court also effectively overruled Howard Johnson Company,[17] a case relied upon by my colleagues in their majority opinion.[18]

III

In addition to and supplementing the applicable case law, there are compelling policy reasons why this record requires a conclusion that the Head Custodians in this case are not supervisors within the meaning of the Act. By passing the Act, the Legislature has afforded representation rights which did not exist for education personnel before the Act's passage. In implementing the Legislature's mandate, there should be a presumption in favor of eligibility for inclusion in a unit found to be appropriate. The presumption should stand unless rebutted by a party making an allegation of ineligibility for unit inclusion. This is consistent with fairness and California law on pleading and the allocation of the burden of proof.

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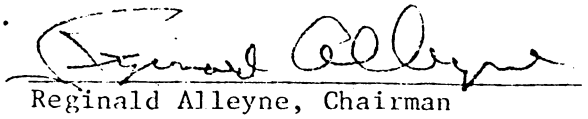
17. 201 NLRB 376, 82 LRRM 1258 (1973).

18. The facts in Dunkirk and Howard Johnson are similar, the NLRB panel members were the same in both cases, and both cases arose in the same federal judicial circuit.

It may be argued that the private and public sectors differ, in that supervisors under our Act are eligible for representation in supervisory units, while private sector supervisors under the NLRA are not eligible for inclusion in units. But this ignores the true status of supervisory units under our Act and our statistics on supervisory units.

Government Code Section 3545(b) prohibits a union from representing a supervisory unit of employees if supervisors in the proposed supervisory unit supervise employees also represented be the same employee organization. Given the limited number of employee orgnaizations operating in the education sector, it is not at all surprising to me that out of 1,824 requests for recognition and 370 interventions seeking recognition or certification as exclusive representative, and describing an assortment of proposed negotiating units, only five supervisory units have been proposed and requested by employee organizations. The reality of it all is that it is uncertain that there will ever by very many supervisory units under the Act, so long as the Act, in this respect, remains in its present form. Accordingly, I see little difference between the effect of a private sector supervisory status and the effect of a supervisory status under our Act. Accordingly, I believe that the Board should not find a supervisory status unless the party making that allegation is able to show by a preponderance of the evidence that the test provided in the Act has been satisified. Particularly, we ought to take care that employees who work with their hands, performing relatively unskilled work, are not effectively denied rights under the Act solely because their Employer happens to have endowed them with the authority to give routine directions to other employees doing the same or, as in this case, less skilled work.

I agree with the majority conclusion that the secretaries are not supervisors within the meaning of the Act.



Reginald Alleyne, Chairman

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

FREMONT UNIFIED SCHOOL DISTRICT, Employer and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 204, Employee Organization and UNITED PUBLIC EMPLOYEES, LOCAL 390, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Employee Organization	)	Case Nos. SF-R-8 SF-R-9 SF-R-10 SF-R-385 EERB Decision No. 6

Appearances: Arthur J. Krannawitter, Staff Representative, for Fremont Unified School District; William D. Dobson, Attorney, for California School Employees Association, Chapter 204; Stuart Weinberg, Attorney (Van Bourg, Allen, Weinberg and Roger), for United Public Employees, Local 390, Service Employees International Union, AFL-CIO.

Before Alleyne, Chairman, Gonzales and Cossack, Members.

OPINION

PROCEDURAL HISTORY

On April 1, 1976, United Public Employees, Local 390, Service Employees International Union, AFL-CIO (UPE), filed three requests for recognition with the Fremont Unified School District. The three units requested were a "school operations" unit,[1] a "skilled trades and crafts" unit[2] and a "transportation"

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[1] The request for recognition for the school operations unit included in the unit the job classifications of: head custodian, custodian I, custodian II, matron, and substitute custodian. At the hearing, UPE amended the request to also include the job classifications of grounds helper, gardener, and gardener foreman. The number of employees in this requested unit is approximately 161.

[2] The request for recognition for the skilled trades and crafts unit included in the unit the job classifications of: fire safety communications specialist, maintenance electrician, maintenance plumber, equipment mechanic, maintenance carpenter, maintenance glazier, maintenance locksmith, maintenance painter, zone building maintenance mechanic and grounds equipment mechanic. At the hearing, UPE amended the request to delete the job classifications of grounds equipment mechanic and maintenance glazier, and to include the job classifications of gardening mechanic, equipment operator, and maintenance carpenter-glazier. The number of employees in this requested unit is approximately 36.

unit.[3] On April 2, 1976, California School Employees Association, Chapter 204 (CSEA), filed an intervention to the three units alleging majority support in a unit of all classified employees. UPE subsequently filed an intervention to the unit sought by CSEA alleging at least 30 percent support in a "food services" unit.[4] A formal unit determination hearing was held before a hearing officer of the Educational Employment Relations Board on July 29 and 30, 1976.

ISSUES

The first issue presented in this case is the designation of an appropriate negotiating unit or units for the classified employees of the Fremont Unified School District.

The remaining three issues are whether the Classified Personnel Office Assistant, Certificated Personnel Office Assistant and Secretary to the Associate Superintendent are "confidential employees" within the meaning of the Act.

DISCUSSION

Appropriate Units

The Fremont Unified School District has an average daily attendance of approximately 20,971 students in the elementary schools and 11,788 students in the high schools, continuation schools and an adult school. There are 48 sites on which are distributed 35 elementary schools, six junior high schools, four high schools, two continuation schools and one adult school.[5]

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[3] The request for recognition for a transportation unit included in the unit the job classifications of: bus driver and substitute bus driver. The number of employees in this requested unit is approximately 46.

[4] The intervention for a food services unit included in the unit the job classifications of: cook, baker, food service assistant I, food service assistant II, and food service assistant transport. At the hearing, UPE amended the request to delete the job classification of food service assistant transport and include the job classification of food service assistant I - transport. The number of employees in this requested unit is approximately 103.

[5] While the record presents no evidence with respect to these facts, we take official notice of the information reported in the Annual Apportionments Report, California State Department of Education, Form J-19 (July, 1976).

Regarding the unit determination issue, both CSEA and the district urge the establishment of a single comprehensive negotiating unit for the classified employees. CSEA emphasizes that the bargaining proposals of CSEA and UPE in past years have represented all classified employees and generally contained provisions broadly applicable to all classified employees. The district primarily argues that the efficient operation of the school district demands a single unit.

UPE opposes a single unit and asserts that the four units for which it petitioned are each appropriate based upon a separate and distinct community of interest. In addition to presenting evidence regarding community of interest factors for the employees in these four units, UPE submitted evidence regarding community of interest factors for the remaining classified employees who can be generally identified as "instructional aide" employees and "office-technical and business services" employees.

With regard to the determination of appropriate negotiating units, Government Code section 3545(a) provides:

> 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.

Applying the statutory criteria to the facts of this case, we conclude, as we did in Sweetwater Union High School District,[6] that the following units are appropriate: (1) a unit, which for ease of reference we shall describe as an operations-support services unit, consisting of the job classifications for which UPE petitioned in its school operations unit, skilled trades and crafts unit, transportation unit and food services unit, (2) an instructional aides (paraprofessional) unit, and (3) an office-technical and business services unit. None of these units shall include noon-duty supervisors, for which neither party petitioned, nor managerial, supervisory or confidential employees.

I

We first address the criterion of the community of interest between and among the employees.

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[6] EERB Decision No. 4, November 23, 1976.

With regard to the community of interest of the comprehensive unit, the district noted that it is a merit system district with a Personnel Commission established according to the scheme set forth in Education Code sections 13701 et seq. The district argues that the merit system renders unnecessary separate units because the Personnel Commission promulgates rules which apply to all classified employees while recognizing the special interests and needs of certain employees.

We find that the existence of the merit system in this district does not mandate the establishment of a comprehensive classified employee unit. The merit system was developed to assist districts in personnel matters prior to the time when employees were able to select or reject an exclusive representative. The procedures under the merit system do not control the development of the new meeting and negotiating system implemented by Government Code section 3540 et seq.

The four units for which UPE petitioned are a school operations unit, a skilled trades and crafts unit, a transportation unit, and a food services unit. None of these four requested units has a separate and distinct community of interest, even though each of the four groups has some characteristics which distinguish it from the other classified employees.

The school operations employees are different from the other classified employees in that approximately half of these employees work the swing or graveyard shifts rather than the day shift. They generally report to work at the maintenance or custodial offices at particular school sites, a location separate from the reporting sites of the other classified employees, with the exception of 11 employees who report to the grounds department. Eighty of these employees receive either a paid half-hour lunch or a five percent shift differential as a result of working odd shifts.

The skilled trades and crafts employees are also different in some respects from the other classified employees. For these employees, a general qualification for employment, in addition to the equivalent of an eighth grade education, is a year of journeyman work experience. Each of the crafts and trades have a separate and distinct seniority that is not interchangeable with other employees either within or without the requested unit.

The transportation employees are distinguished from the other classified employees in that they are all required to possess a class II driver's license, a first-aid certificate and a California Highway Patrol bus driver's certificate. Approximately half of their compensation is from the state transportation

reimbursement fund. Additionally, they are assigned their choice of total work hours and bus routes based upon their seniority as a bus driver.

The food service employees are required to wear uniform dress. They work in the kitchen at the school site to which they are assigned. They receive educational incentive pay for taking certain work-related courses at the local community college. They are compensated through the meals for the Needy Program which is funded through a local property tax override, income from cafeteria sales processed through the general fund, and a federal government commodities reimbursement program.

With regard to each of the four units requested by UPE, we find that the distinguishing characteristics, taken together, are not sufficient to establish a separate community of interest and therefore a separate appropriate unit because the distinguishing characteristics do not substantially distinguish the employees in the requested unit from the other classified employees.

An appropriate negotiating unit in this case, based upon a community of interest, is a combination of the four units in a single unit which we shall term an operations-support services unit.

The primary work functions of the operations-support services employees all involve providing a proper physical environment and support services for students. They drive and repair school buses and other district equipment, prepare meals for students, and perform janitorial, gardening and general maintenance work at the district facilities. As a prerequisite to employment, they are all required to have the equivalent to completion of the eighth grade educational level. Most of these employees work "full-time", defined by the district as four or more hours daily employment, which entitles them to employer-paid insurance benefits, and most work the day shift. Generally the school operations-support services employees report to work at a central location at a school site or the corporation yard from which they are dispatched to various other locations for the actual performance of their work duties. Except as noted above, these employees are compensated through the district's general fund.

The school operations, skilled trades and crafts, and transportation employees have overlapping lines of supervision. Some school operations employees are supervised by the school Principal and Administrative Assistant and some by the Grounds Supervisor and Administrative Assistant. Of the skilled trades and crafts employees, most are supervised by the Director of Maintenance and Administrative Assistant, while others are supervised by the Assistant Superintendent of Transportation and Transportation Supervisor

or the Grounds Supervisor and Administrative Assistant. All of the transportation employees report to the Assistant Superintendent of Transportation and Transportation Supervisor. The food service employees are supervised by the Cafeteria Manager and Director of Food Service. The positions of Director of Food Service, Transportation Supervisor and Administrative Assistant, are parallel in authority and all three report to the Business Manager who in turn reports to the Superintendent and Board of Trustees.

The school operations, skilled trades and crafts, transportation and food services employees have similar characteristics relating to work function, educational requirements, work hours, roving work location, compensation and supervision which combine to establish that a combined unit is appropriate.

In finding appropriate an operations-support services unit consisting of a combination of the four units requested by UPE, we note that several job classifications petitioned for by CSEA in its intervention for a comprehensive unit were not included in any request for recognition filed by UPE, yet they appear by job title to possibly be appropriately included in the combined unit. These are the job classifications of utilityman, delivery driver, supply clerk-utilityman, warehouseman, instructional materials deliveryman-technician, bus dispatcher-driver, bus driver pep., delivery driver-utilityman, and maintenance glazier. The evidence did not include job descriptions or other information regarding community of interest factors of these employees and we do not by this decision include them in the combined unit. They may vote subject to challenge in the elections.

The classified employees who remain after the establishment of the operations-support services unit are the subject of the petition filed by CSEA for a comprehensive classified unit.

Based upon the community of interest criterion, these employees are appropriately grouped into two negotiating units which we shall term an instructional aides unit[7] and an office-technical and business services unit.[8]

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[7] From the employer's salary schedule, we include the following job classifications: instructional aide, bilingual aide, and community aide-adult school, totaling approximately 238 employees.

[8] The following job classifications are also from the employer's salary schedule: duplicating services clerk, typist clerk I, instructional materials clerk I, telephone operator, telephone operator-typist clerk, typist clerk II, career education clerk, instructional materials clerk II, key punch operator, account clerk I, data processing clerk, personnel clerk I, school clerk-range A,

See Pittsburg Unified School District[9] and Sweetwater Union High School District, supra.

In the present case, the duties of the instructional aide employees involve assisting the certificated staff with the supervision and training of students. The primary duties of other classified employees do not involve direct interaction with students and their educational development. Additionally, instructional aides are required to have an education equivalent to the completion of the tenth grade plus some applicable education, experience or training in the care and supervision of children. Instructional aide employees are compensated by non-district state and federal categorical funds. Their retention as an employee depends upon the continuation of categorical funding. Aides have little contact with other classified employees. Customarily aides are assigned for a full school year to the classroom of a particular teacher or teaching team. They have a line of supervision distinct from other classified employees in that they are directly supervised by a classroom teacher or teachers, and ultimately by the Principal and the Business Manager, Superintendent and Board of Trustees.

The distinguishing characteristics of the instructional aide employees relating to work function, education and experience requirements, compensation, lack of interaction with other classified employees, work location, and supervision combine to establish that a separate instructional aides unit, consisting of the job classifications listed in footnote 7, supra, is appropriate.

As in Sweetwater, supra, the office-technical and business services employees constitute a separate appropriate unit based upon a separate and distinct community of interest. The functions of these employees are generally to perform clerical and recordkeeping work. They are required to type, operate business machines, maintain files and keep records. They are required to have an education equivalent to the completion of the twelfth grade, sometimes

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school secretary I-range A, staff secretary I, instructional materials clerk III, offset duplicating machine operator, school clerk-range B, typist clerk III, account clerk II, accounts payable clerk, purchasing clerk, staff secretary II, lead key punch operator, personnel clerk II, school secretary I-range B, school secretary II, staff secretary III, account clerk III, computer operator I, payroll bookkeeper, duplications technician, staff secretary IV, computer operator II, programmer, programmer analyst I, programmer analyst II, library clerk I, library clerk II, totaling approximately 247 employees.

[9] EERB Decision No. 3, October 14, 1976.

supplemented with an associate of arts degree in a particular subject area. All of these employees work in assigned offices in district facilities. There are several lines of supervision for these employees. Generally, they report to a person in the district office, a department head, the Transportation Supervisor, Director of Maintenance or Warehouse Supervisor, who each in turn reports to the Business Manager, Superintendent and Board of Trustees. Others report to the school Principal who in turn reports to the Associate Superintendent, Superintendent and Board of Trustees.

The distinguishing characteristics of the office-technical and business services employees relating to work function, educational requirements, work location and supervision combine to establish that a separate office-technical and business services unit, consisting of the job classifications listed in footnote 8, supra, is appropriate.

II

On the evidence presented in this case, the two criteria of established practices and the efficient operation of the school district do not alter the unit determination suggested by the community of interest criterion.

Regarding established practices, the evidence showed that for eight years both CSEA and UPE have represented employees in the district. In the years 1973/74 through 1976/77, both CSEA and UPE presented to the employer salary and other proposals which represented all the classified employees under the authority of the Winton Act.[10] Generally these proposals related broadly to all classified employees; however, in the 1975/76 UPE proposal, 18 of 38 items pertained to specific groups of employees.

It is the position of CSEA that the established practice of Winton Act proposals which generally benefited all classified employees should persuade the Board to determine that a comprehensive classified unit is appropriate. As we stated in Sweetwater, supra, where the record, as in this case, does not indicate whether the employer required an employee organization to represent all classified employees as a precondition to becoming a designated representative under the Winton Act, we give little weight to established practices as they relate to the composition of the unit represented under the authority of the Winton Act.

CSEA also presented evidence that it has approximately 350 or 375 of a possible 800 members among the classified employees. CSEA apparently argues

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[10] Education Code sections 13080-13090.

that since CSEA "has serviced the needs of all of the various positions in the classified service", and since CSEA has a substantial number of members, therefore a comprehensive unit should be established. We find that evidence of the number of members of an employee organization is alone not sufficient evidence of "the extent to which...employees belong to the same organization". We do not know from the raw number whether the comprehensive unit naturally evolved in this district or whether it was mandated by the employer's rules and regulations relating to recognition of employee organizations under the Winton Act. It was not shown whether the member employees are representative of a cross-section of job classifications in the district or whether they may be concentrated in certain job classifications. A concentration of employees in instructional aide classifications, for example, could indicate support for a separate instructional aides unit rather than a comprehensive unit. Further, we do not know how many of the member employees are managerial, supervisory or confidential employees and thus not eligible to be included in the rank and file unit determined by this decision. Therefore, in this case we do not consider the number of employees who are members of CSEA.

The criterion of established practices does not in this case alter the units suggested by the community of interest criterion.

III

The district presented three witnesses regarding the criterion of "the effect of the size of the unit on the efficient operation of the school district." The Assistant Superintendent for Personnel gave his opinion that he would be better able to administer the provisions of the Education Code relating to classified employees if a single classified unit is established. The Director of Maintenance testified that in the past neither he nor any of his employees have used release time in the Winton Act meet and confer process. It was his opinion that if "numbers" of his employees "are off on bargaining", it would be a "hardship" on his department and he would not be able to render the same amount of service that he has in the past. However, he agreed that he has no idea of what would constitute a reasonable number of employees to be released to negotiate with the employer. The Principal of a junior high school stated that he efficiently operates his school under the present rules governing all classified employees, he fears that negotiations with multiple units would cause him to spend much time away from his

building because he is involved with the negotiating team, and he believes that it would be difficult for him to operate his school if his employees took time off from work for negotiating. However, he had no knowledge of how many meetings it would take to conclude agreements for one unit as opposed to multiple units.

The three district witnesses thus expressed opinions and fears regarding the impact of multiple units as opposed to a single unit on the efficient operation of the school district. However, none of these witnesses had any experience with multiple units. And no concrete facts were presented by the person in charge of negotiations regarding projected time requirements for district personnel dealing with negotiations matters or regarding the projected number of employees required to be released during working hours for negotiations with single as opposed to multiple units. We know that the opinion of the district is that it has operated efficiently with a single unit, but we have no evidence regarding the projected efficiency of operations with multiple units or past experience with multiple as opposed to single units.

In spite of the limited nature of the evidence regarding the efficient operation of the school district, as in Sweetwater, supra, we have been mindful of this criterion with regard to the unit determination in this case. We conclude that in this case the criterion of the efficient operation of the employee should not preclude the establishment of the three units suggested by the community of interest criterion.

Confidential Employee Issues

In Sierra Sands Unified School District,[11] the Board set forth its general commentary on Government Code section 3540.1(c) which defines the term "confidential employee" as "any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations." In summary, the Board's position on the question of confidentiality is that, in interpreting the Act, the Board feels that an employer should be allowed a nucleus of individuals to assist the employer in its employer-employee relations. Further, the employees who are designated as "confidential employees" are not to be considered "public school employees" within the meaning of the Act. Finally, the Board believes that the employer's right to the undivided loyalty of a nucleus of staff designated as "confidential" outweighs the inherent denial of representation rights of those employees designated as "confidential".

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[11] EERB Decision No. 2, October 14, 1976.

The three alleged confidential employees in the present case are the Classified Personnel Office Assistant, the Certificated Personnel Office Assistant and the Secretary to the Associate Superintendent.

Classified Personnel Office Assistant

We conclude that the Classified Personnel Office Assistant is a confidential employee. She is secretary to the district administrator who serves in the dual capacities of Assistant Superintendent of Personnel and Secretary to the Personnel Commission. In her role as secretary to the Assistant Superintendent of Personnel she has a close association with the employer's employer-employee relations. She stated that for negotiating purposes she gathers data regarding classified employees such as number of employees and sources of funding. On other occasions she sees memoranda requesting other persons to gather data for negotiating. She is involved in classified employee grievances under the direction of the Assistant Superintendent, including the typing of correspondence regarding grievances.

On the basis of these activities, we conclude that the Classified Personnel Office Assistant in the regular course of her duties, has access to, or possesses information relating to, her employer's employer-employee relations. "Employer-employee relations" includes, at the least, employer-employee negotiations and the processing of employee grievances. This employee is involved in both the gathering of data for negotiations and the processing of employee grievances.

Other activities of the Classified Personnel Office Assistant in her role as secretary to the Secretary of the Personnel Commission are not a factor in our determination that the Classified Personnel Office Assistant is a confidential employee. They include secretarial, supervisory and technical personnel work concerning the implementation of the Education Code and district rules and regulations as they pertain to classified personnel. She participates in the testing procedure for classified employees under the direction of the Assistant Superintendent. She prepares examination announcements, determines the types of tests to be given, administers tests, tabulates the results and establishes the employment eligibility list. She also occasionally serves as an oral board member on classified employee interview panels. These activities relate to non-confidential personnel matters and not to the employer's employer-employee relations.

In her role as secretary to the Secretary of the Personnel Commission the Classified Personnel Office Assistant types the minutes of the meetings of the Personnel Commission including the minutes of occasional executive sessions. No evidence was offered with regard to the confidentiality of the matters which are the subject of the executive sessions. We note that among the subjects of the executive sessions could be appeals by permanent classified employees and commission investigations regarding the suspension, demotion or dismissal of such employees as authorized by Education Code sections 13743 and 13744 and Government Code section 54957. While in a future case we may find that such matters relate to the employer's employer-employee relations, we do not so find on the limited evidence in this case.

Certificated Personnel Office Assistant

We conclude that the Certificated Personnel Office Assistant is a confidential employee. She, like the Classified Personnel Office Assistant, works under the immediate supervision of the Assistant Superintendent of Personnel. Her duties regarding certificated employees parallel those of the Classified Personnel Office Assistant; however, she is not involved in the functions of the Personnel Commission and does no work relating to classified employees.

The Certificated Personnel Office Assistant handles data relating to certificated employee negotiations and sometimes sees proposals relating to such negotiations. She sees minutes of the certificated negotiation meetings. She has gathered data regarding the salaries of teacher substitutes, hourly and part-time wages in other districts, and the plans of other districts concerning salary increases.

While the duties of the Certificated Personnel Office Assistant relate only to certificated negotiations and presumably certificated personnel matters, her immediate supervisor has functions relating to both certificated and classified negotiations and personnel matters.

Even though the activities of the Certificated Personnel Office Assistant relate only to certificated employees, we conclude that she is a confidential employee. The language of Government Code section 3540.1(c) does not distinguish between information relating to certificated employees and information relating to classified employees. The employer cannot be expected to rigidly segregate negotiating information so that it is applied in only one negotiating arena. Information or data pertinent to one series of negotiations will often be applied in the other series, especially in the area of the budget. Segregation would

be especially difficult in the present case where the same supervisor, the Assistant Superintendent of Personnel, is responsible for overall policies in both the certificated and classified negotiations and personnel matters. We believe the employer has the right to expect loyalty from a nucleus of employees in matters of employer-employee relations without regard to whether the classified employee works with information relating apparently only to certificated or classified negotiations.

Secretary to the Associate Superintendent

We conclude that the Secretary to the Associate Superintendent is not a confidential employee. The duties of the Associate Superintendent include instructional services, curriculum and instructional support services. He has no responsibilities relating to employee negotiations. He has no role in the grievance procedure of classified employees. Further, he is not involved in "any kind" of "personnel functions".

The Secretary to the Associate Superintendent stated that she has never had occasion to review any documents having to do with proposals the district might be making to classified employees. She also stated that although she has received calls from the Superintendent's office summoning the Associate Superintendent to caucuses of the employer's bargaining team, she has never seen any of the material he brought back.

In view of the absence of any facts demonstrating that this employee, in the regular course of her duties, has access to, or possesses information relating to, her employer's employer-employee relations, we find that the Secretary to the Associate Superintendent is not a confidential employee.

ORDER

The Educational Employment Relations Board directs that:

1. The following units are appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative:

Operations-support services unit

Included: head custodian, custodian I, custodian II, matron, substitute custodian, grounds helper, gardener, gardener foreman, fire safety communications specialist, maintenance electrician, maintenance plumber, equipment mechanic, maintenance carpenter, maintenance locksmith, maintenance painter, zone building maintenance mechanic, gardening mechanic, equipment operator, maintenance carpenter-glazier, bus driver, substitute bus driver, cook, baker,

food service assistant I, food service assistant II, and food service assistant I - transport.

Excluded: All other employees, including managerial, supervisory and confidential employees.

Instructional aides (paraprofessional) unit

Included: instructional aide, bilingual aide, and community aide-adult school.

Excluded: All other employees, including noon-duty supervisors, managerial, supervisory, and confidential employees.

Office-technical and business services unit

Included: duplicating services clerk, typist clerk I, instructional materials clerk I, telephone operator, telephone operator-typist clerk, typist clerk II, career education clerk, instructional materials clerk II, key punch operator, account clerk I, data processing clerk, personnel clerk I, school clerk-range A, school secretary I-range A, staff secretary I, instructional materials clerk III, offset duplicating machine operator, school clerk-range B, typist clerk III, account clerk II, accounts payable clerk, purchasing clerk, staff secretary II, lead key punch operator, personnel clerk II, school secretary I-range B, school secretary II, staff secretary III, account clerk III, computer operator I, payroll bookkeeper, duplications technician, staff secretary IV, computer operator II, programmer, programmer analyst I, programmer analyst II, library clerk I, and library clerk II.

Excluded: All other employees, including managerial, supervisory and confidential employees.

2. The job classifications of utilityman, delivery driver, supply clerk-utilityman, warehouseman, instructional materials deliveryman-technician, bus dispatcher-driver, bus driver pep., delivery driver-utilityman, and maintenance glazier are not included in any unit. The employees in these job classifications may vote subject to challenge in the elections.

3. The following employees are "confidential" within the meaning of Section 3540.1(c) of the Act:

Classified Personnel Office Assistant
Certificated Personnel Office Assistant

4. The following employee is not "confidential" within the meaning of Section 3540.1(c) of the Act:

Secretary to the Associate Superintendent

5. The employee organizations have the 10 workday posting period of the Notice of Decision in which to demonstrate to the Regional Director at least 30 percent support in the above units. The Regional Director shall conduct an election in each unit at the end of the posting period if (1) more than one employee organization qualifies for the ballot, or (2) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

By: Raymond J. Gonzales, Member

Jerilou H. Cossack, Member

Dated: December 16, 1976

Reginald Alleyne, Chairman, concurring in part, dissenting in part.

I agree with the majority result on the appropriate units for bargaining. The facts in this case do not differ materially from those in Sweetwater Union High School District[1] where we reached a similar conclusion on the appropriate unit issue. Cases with similar facts must be decided in a similar manner. I also agree with the majority decision that the Secretary to the Associate Superintendent is not a confidential employee within the meaning of the Act.

I do not agree with the conclusion of the majority that on this record we can properly find that the Classified Personnel Office Assistant and the Certificated Personnel Office Assistant are confidential employees within the meaning of Government Code Section 3540.1(c). Government Code Section 3540.1(j) provides that a confidential employee is not a "public school employee", or an "employee". Thus confidential employees, as defined in the Act, along with "persons appointed by the Governor", "persons elected by popular vote" and "management employees", are totally removed from the Act's coverage in respect to both eligibility for inclusion in negotiating units of any kind and protection from unfair practices as defined in Section 3543.5 of the Act.

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1. EERB Decision No. 4, November 23, 1976.

With that, I would require a more stringent standard of proof of a confidential status than that apparently required by my colleagues. The party alleging a confidential status has the burden of proving it with a preponderance of evidence. Also, I believe that the standard of proof required of the District should be applied to determine whether a person is confidential within the meaning of our decision in Sierra Sands Unified School District.[2] In that decision, we said:

> Presumably, the Legislature denied certain rights to confidential employees for the sole purpose of guaranteeing orderly and equitable progress in the development of employer-employee relations.
>
> The assumption is that the employer should be allowed a small nucleus of individuals who would assist the employer in the development of the employer's positions for the purposes of employer-employee relations. It is further assumed that this nucleus of individuals would be required to keep confidential those matters that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture. (Emphasis added.)

Without question, that statement relates to the labor-management relations activities of the parties and necessarily limits confidential information to labor-management relations matters. It does not extend confidentiality to other personnel matters.

On reading this record, I find that the District has not established by a preponderance of the evidence that the Certificated Personnel Office Assistant and the Classified Personnel Office Assistant had access to matters that "if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture."

The Classified Personnel Office Assistant

The Classified Personnel Office Assistant described her duties as "secretarial, supervisory and technical personnel work concerning the implementation of the Education Code and rules and regulations as they pertain to classified personnel." When asked whether she handled any materials concerning "classified personnel salary or employee negotiations", she answered, "No". She also testified that the District's Employee Relations Staff Representative and his Secretary handle

2. EERB Decision No. 2, October 14, 1976.

all employee negotiations documents. At the hearing in this case, the Employee Relations Staff Representative conducted the direct examination of the Classified Personnel Office Assistant, and he agreed with her testimony that he and his secretary handled classified employee negotiations.

The Classified Personnel Office Assistant testified that she typed minutes of Personnel Commission meetings and typed correspondence concerning employee grievances and that she gathered data on numbers of classified employees for bargaining.

I believe that these duties do not provide the Classified Personnel Office Assistant with information that "if made public prematurely might jeopardize the employer's ability to negotiate with employees."

I agree with the reasoning of the majority that in this case the role of secretary for the Secretary to the Personnel Commission and the typing of minutes of Personnel Commission executive sessions does not make this person a confidential employee as defined in the Act. Despite that conclusion by the majority, they also conclude that the employee's access to information on the number of employees and how they are funded, and the typing of grievance correspondence make her a confidential employee.

I think this is not consistent reasoning. If the Personnel Commission matters are not confidential, I fail to see how the collection of data on the number of classified employees and how they are funded can possibly lead to a confidential status. The number of classified employees is easily obtainable by anyone, and once obtained by an employee organization that data could not possibly jeopardize the District's ability to negotiate; likewise, data on the source of classified employee funding. This is all public information under the California Public Disclosure Act.[3] Every citizen is entitled to see it on proper demand.

Evidence of involvement with grievances is limited to a single statement concerning correspondence on employee grievances. There was no evidence to show that the typed correspondence dealt with anything more than routine information on routine procedural matters; there was no testimony suggesting

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3. Government Code Section 6250 et seq.

that the District's ability to handle grievances might be jeopardized by the information she typed.[4]

The Certificated Personnel Office Assistant

The Certificated Personnel Office Assistant testified that she is a member of the California School Employees Association and has held every elected office in the local CSEA chapter, as well as some CSEA committee chairman positions by appointment. She served on a CSEA salary committee and was chairman of that committee for two years. In that capacity she made wage proposals to the District. As a member of the CSEA's negotiating team, she signed a 1975-76 strike settlement agreement between CSEA and the District School Board.

My colleagues find that this active member of CSEA, whose negotiating activities for her local CSEA chapter had to be well known to the District's employee relations management personnel, has been placed in a position giving her access to information "that if made public prematurely might jeopardize the employer's ability to negotiate with employees." I think it is most unlikely that the District would place her in such a position. And the evidence fails to demonstrate that she was so placed.

The Certificated Personnel Office Assistant testified that occasionally she saw certificated employee organization proposals but that she did not see proposals or counterproposals of management. She said that she occasionally had access to negotiation meetings minutes, and that she had access to the District budget. She testified further that she once gathered data on salaries and raises in other districts; and that she planned to gather data on the number of certificated employees and how many of them are categorically funded.

Surely these duties do not provide the Certificated Personnel Office Assistant with access to material which, "if made public prematurely might

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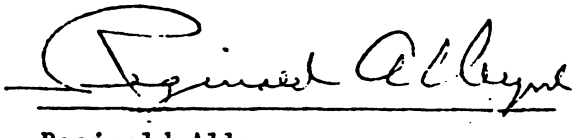
4. The NLRB has taken the position that involvement in grievance procedures does not make an employee confidential within the meaning of the National Labor Relations Act. B.F. Goodrich Company, 115 NLRB No. 103, 37 LRRM 1383 (1956). In B.F. Goodrich Company, the NLRB limited the term "Confidential" to those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. I equate employer-employee relations, as used in our Act, with labor relations, as used in the NLRA context.

   The majority opinion states: "She is involved in classified employee grievances under the direction of the Assistant Superintendent, including the typing of correspondence regarding grievances. Actually, the only evidence on the record of her involvement in grievances relates to the typing of correspondence regarding grievances."

jeopardize the employer's ability to negotiate". All of it was either known to the employee organization with which the District negotiated or was easily and legitimately ascertained by an employee organization. The employee organizations know of their own proposals; minutes of negotiations would reveal nothing not known to the employee organization participating in the negotiations; the District budget is a public document available to any citizen; salaries and raises in other school districts are often listed in daily newspapers, and the data from which the total number of certificated employees may be ascertained is available to the general public under the California Public Disclosure Act.[5]

The majority decision, in making the Certificated Personnel Assistant a confidential employee, and, as a result, a nonemployee under the Act, has a paradoxical consequence. Without violating the unfair practice provisions contained in Section 3543.5 of the Act, the District could discharge the Certificated Personnel Office Assistant because of her prominent role in negotiations and other activities for the CSEA. Given the constitutional and other statutory protection that school and other public employees have from arbitrary employment discrimination, it is unlikely that this will happen. And nothing in this case suggests that the District would take that action. I mention what to me is that unsettling theoretical possibility merely to highlight its corollary; namely, that despite her well-known involvement in negotiations and other activities for CSEA, she maintained the Certificated Personnel Office position now regarded by this Board as confidential within the meaning of the Act.[6]



Reginald Alleyne,
Chairman

5. Government Code Section 6250 et seq.

6. The employer's brief contains no argument on confidential employees.

B. F. GOODRICH CO—

Decision of NLRB

B. F. GOODRICH COMPANY. Oaks, Pa. and LOCAL NO. 281, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO. Case No. 4-RC-2849, March 7, 1956, 115 NLRB No. 103

Hearing Officer Katherine W. Neel.

Before Leedom, Chairman; Murdock, Peterson, Rodgers, and Bean, Members.

CONFIDENTIAL EMPLOYEES Sec. 9(b)

—Definition accorded term "confidential employees" in Ford Motor Company case, 17 LRRM 394, will be adhered to strictly in this and future cases, thus limiting term "confidential" to embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. Prior decisions are overruled to the extent that they are inconsistent with this view ▶64.30

—Secretaries to employer's personnel manager and office manager are confidential employees and accordingly are excluded from clerical unit, since officials for whom they work participate in negotiations of bargaining contracts and, therefore, formulate, determine, and effectuate management policies in the field of labor relations ▶64.30

—Secretaries to employer's plant manager and industrial engineering, purchasing department, production and technical division managers are not confidential employees and accordingly are included in clerical unit, since duties of these management officials for whom employees work do not warrant a finding that these officials formulate, determine, and effectuate management policies in the field of labor relations. These management representatives are charged with such responsibilities as hiring, discharging, disciplining, and promoting employees under their supervision, as well as granting merit increases and handling grievances of those employees at some stage of the grievance procedure ▶64.30

—Senior payroll clerk and telephone operator and receptionist are not confidential employees and senior payroll clerk is not a supervisor; therefore both employees are included in clerical unit. Senior payroll clerk assumes duties of supervisor of time keeping and payroll when the latter is ill or on vacation and therefore her supervisory authority is of a sporadic nature. The telephone operator and receptionist operates the teletype machine when the utility clerk is elsewhere engaged and on occasion receives messages concerning labor relations over the telephone or teletype machine ▶64.30 ▶42.304

The petitioner, which is the certified bargaining representative of production and maintenance employees at the plant involved, seeks to represent the office and clerical employees in a separate unit. The employer agrees that a unit of office and clerical employees is appropriate, but the parties disagree as to the status of certain individuals, the petitioner seeking to include them and the employer contending for their exclusion.

The secretaries to the plant engineer and personnel, office, industrial engineering, purchasing department, production, and technical division managers perform the usual duties of their classification, handling the general secretarial, clerical, and stenographic work required by the officials to whom they are assigned.

The plant engineer and the industrial engineering, purchasing department production, and technical division managers are charged with substantially similar responsibilities, such as hiring, discharging, disciplining, and promoting employees under their supervision, as well as granting merit increases to them and, at some stage of the grievance procedure, handling their grievances. The personnel manager acts as the employer's legal officer and, in addition to representing the employer in the third step of the grievance procedure, participates in the negotiation of bargaining contracts with the petitioner. If the petitioner is certified herein, he will also bargain with it as to the clerical unit. The office manager, apart from the role he plays in the disposition of grievances of the employees whose work he directs, will assist in the bargaining negotiations with the petitioner if it is certified.

[*Text*] "Since the early Ford Motor Company case,[4] in which definitions theretofore accorded the term confidential employees were reexamined, the Board has consistently excluded from bargining units as confidential employees persons who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. Although announcing its intention in the Ford Motor Company case to limit the term 'confidential' so as to embrace only such employees, the Board has, from time to time since that decision, expanded its view as to what constitutes a confidential employee by designating as 'confidential,' for example, secretaries to persons involved in the handling of grievances[5] and cashiers having access to labor relations policy data.[6] Upon further reexamination of our holdings in the instant connection, we are still of the opinion expressed in the Ford Motor Company case that any broadening of the definition of the term 'confidential' as adopted in that decision needlessly precludes employees from bargaining collectively together with other employees sharing common interests. Consequently, it is our intention herein and in future cases to adhere strictly to that definition and thus to limit the term 'confidential' so as to embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate mangement policies in the field of labor relations.[7]

"On the basis of the foregoing, we find that the secretaries to the personnel manager and office manager are confidential employees who should be excluded from the unit because of the role in past and future bargaining negotiations assigned to the officials for whom they work.[8] However, there is nothing in the duties of the other management representatives involved which would warrant a finding that they formulate, determine, and effectuate management policies in the field of labor relations. It therefore follows that the secretaries to the plant engineer and industrial engineering, purchasing department, production, and technical division managers are not confidential employees, and we shall include them in the unit."

PROFESSIONAL EMPLOYEES (Sec. 2(12)

—Accountant and junior accountant who are responsible for determining total cost of production in rubber plant are not professional employees within meaning of Act and therefore are included in clerical unit. Both employees have taken accounting courses but neither employee is required to be, or is, a certified public accountant or college graduate. About two years' experience on the job is required to perform their work in a satisfactory manner ▶64.557

SUPERVISORS Sec. 2(11)

—Accountant in charge of accounts payable at rubber plant is supervisor within meaning of Act and therefore is excluded from bargaining unit. He directs work of accounts payable clerk, it is his responsibility to keep employer advised as to work performance of that employee, and any recommendation by him, either for a wage increase or dismissal, would be "quite influential" ▶42.304

Representation election directed. Buyer-expediter who is assistant to manager of purchasing department may vote subject to challenge, since his status cannot be determined from present record.

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4 66 NLRB 1317, 17 LRRM 394.

5 International Smelting & Refining Co. (Raritan Copper Works), Case No. 4-RC-2143 (Not printed in published volumes of Board decisions), upon which the Employer relies herein, is one such case.

6 Bond Stores, Incorporated, 99 NLRB 1029, 30 LRRM 1169.

7 To the extent that Minneapolis-Honeywell Regulator Co., 107 NLRB 1191, 33 LRRM 1357, relied upon by the Employer, and the cases cited in footnotes 5 and 6 and other cases are inconsistent with the views expressed herein, they are hereby overruled.

8 The secretary to the personnel manager whose status is in dispute performs substantially the same duties as the personnel manager's other personal secretary, whom the parties quite correctly agree should be excluded from the unit.

APPENDIX TO TAB E

Senate Bill No. 160

Glossary of Relevant Terms

EERB Organizational Chart

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 c apter.

(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.

GLOSSARY OF RELEVANT TERMS

Apportionments	Amounts computed and allowed to school districts and county superintendents according to the various formulas contained in the statutes governing school finance.
Appropriation	An allocation of funds, income, or estimated income made by the governing board for specific purposes. (Usually an appropriation is limited as to the time when it may be spent).
Arbitrator	An impartial third party to whom disputing parties submit their difference 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 interests in new terms and conditions of an agreement rather then rights under the terms of the existing agreement.
Areawide Aid	The amount raised by an areawide tax levied on the combined amount of assessed valuation of school districts located in an area included in a reorganization plan which is disapproved at an election. Areawide aid is distributed to the component districts and becomes district aid for apportionment purposes for each of the component districts.
Areawide Tax Rate	A tax rate, generally $2.23 for elementary purposes and $1.64 for high school purposes which is actually levied on the combined assessed valuations of school districts located in an area included in a reorganization plan which is voted down at an election. The areawide aid raised by the tax is distributed to the component school districts and becomes the measure of district ability.
Assessed Valuation	A valuation set by a governmental unit upon real and personal property as a basis for levying taxes.

Assessed Valuation per Average Daily Attendance (AV/ADA)	The generally accepted measure of a school district's local wealth or "ability".
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.
Average Daily Attendance (ADA)	A unit of measurement based upon a formula for measuring the full-time equivalent of pupil school attendance. Most apportionments are based on ADA. In practice, ADA approximates 97 percent of actual total enrollment. An example of an ADA calculation for a regular full-time elementary pupil would be to divide the number of days of attendance by the number of days school was taught in the regular schools.
Bargaining Agent	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).
Basic Aid	The state's guarantee of a minimum amount of state money for each unit of ADA of the preceding year to be apportioned to every district in the state regardless of its wealth. This currently consists of $125 per ADA, $120 of which is guaranteed by the Constitution and $5 of which is provided for by statute.
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.
Budget Document	A written statement translating the educational plan or programs into costs, usually for one future fiscal year, and estimating income by sources to meet these costs.
Business Agent	Generally, a full-time paid employee or official 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 non-working hours.
Categorical Aid Programs	Special education programs including early childhood education, mentally and physically exceptional children, mentally gifted minors, and bilingual education.
Certificated Service	All employees required by law to possess credentials issued by the State Department of Education and the positions which are limited to those who possess such credentials.
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).
Challenged Ballot	A vote questioned by one of the parties to a representation election. Common pratice 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	Arrangment 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.
Classified Service	All positions and employees in the District's service to which the merit system provisions of the Education Code apply and which are not excepted by those provisions.
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 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 (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 negotations between an individual employee and the employer.
Collier Factor	A system of insuring, for the purposes of State school support only, that assessment levels in the various counties are as nearly equal as possible. The statewide average assessment level is determined, and all counties are assigned "factors" which depend upon where their level falls in relation to the statewide average figure. In effect, counties overassessing and underassessing, receive State equalization aid as if they were assessing at the statewide average assessment level. Should a district in a county with a low assessment level receive less State equilization aid because of the upward adjustment of their assessed valuation, the "loss" must be made up through a countywide school recoupment tax. The assessed valuations of school districts, as corrected by the "Collier Factor", are used to compute state school apportionments.
Community of Interest	A factor to be considered in determining whether employess should be grouped together as an appropriate bargaining unit. Community of interest in 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. 3540.j)
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.

Compensatory Education	Special educational activities carried out for school children from disadvantaged environments.
Computational Tax Rate	A computational tax rate applied to a district's assessed valuation to determine its required contribution toward its foundation program. In most districts this is not the actual tax rate.
Conciliation	See "mediation".
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.
Contingency Appropriation	An amount placed in the budget which is unallocated and against which interbudgetary transfers may be made to take care of expenditures that develop in the budget for which previous funds have not been budgeted.
County School Service Fund	The fund within each county which is used to support the activities of the office of the county superintendents of schools in providing direct services to small school districts and in coordinating educational functions and curricula in the county. The funds receive State, local, and Federal monies.
Current Expense of Education	The total expenditures of a school district for the following purposes: administration, instruction, health services, pupil transportation, operation of plant, maintenance of plant, and fixed charges. Instructions for accounting for and classifying these functions are contained in the California School Accounting Manual, and are mandatory under legislation passed in the 1963 General Session of the Legislature.
Decertification	Withdrawal by a government agency of an organization's official recognition as exclusive negotiating representative. (Article 5)
Derivation	The method prescribed by law of computing and transferring into the State School Fund, the maximum amounts for State support of the public school system. These are contained in the Sections 17301, 17305, and 17307, of the Education Code.
District Aid	The district's contribution to the foundation program partnership, generally computed by multiplying the district's assessed valuation by a certain computational tax rate, not necessarily the tax rate actually levied.

Educational Employment Relations Board	Three member board appointed by the Governor, to administer the Rodda Act. (Sec. 3541)
Employee or Public School Employee	Any person employed by any public school employer except person elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees. (Sec. 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. (Sec. 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 or a school district, a school district, a county board of education, or a county superintendent of schools. (3540.1 k)
Equalization Aid	An additional State contribution to the foundation program of a district if the total of State basic aid and district aid fail to total the amount of the district's foundation program.
Exclusive Bargaining Rights	The right and obligation of an employee organization designated as majority representative to negotiate collectively for all employee, 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".
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. (Sec. 3540.1 e)
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 Forest Reserve Funds	Funds received by a district on account of government-owned forest reserves existing within the territory of that district.
Federal Mediation & Conciliation Service	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 or suitable arbitrators on request; and engages in various types of "preventative mediation." Mediation services are also provided by serveral State agencies.
Foundation Program	A statutory amount per ADA, representing a partnership of State and local resources in guaranteeing "a minimum acceptable of school support" for each pupil in the State. It is a device by which individual district equalization aid is determined. It is not used in measuring special program reimbursements.
General Purpose Tax Rate	The district's tax rate which will be used to compute the revenue limit.
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, fact-finding, 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.
Impact Funds	Funds received by school districts for increased enrollments caused by State or Federal activity, i.e., PL 874 funds are a result of federal installations in a given district.
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. (Sec. 3540.1 f)

Injunction	A court order restraining individuals or groups from committing acts which the court determines may do irraparable harm. There are two types of injunctions: temporary restraining orders, issued for a limited times 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.
Jurisdicational 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 of another. A jurisdictional strike is a work stoppage resulting from a jurisdictional dispute.
Labor Management Relations Act, 1947	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.
Limited Term	A term used in the Education Code to designate employment for periods not to exceed six months, or employment during the authorized absence of a permanent employee.
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.
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 Education Employment Relations Board. (Sec. 3540.1 g)
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 controvery on mutually ageeable terms. The mediator shall meet with the parties, either jointly or separately, and take other steps as he may deem appropriate in order to pursuade 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 exlusive 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 not to exceed three years. (Sec. 3540.1 h)

Memorandum of Understanding

A written nonbinding agreement between the representative of a public agency and a public employee organization setting forth terms and conditions of employment.

Mentally Gifted Minors

For purposes of State School Fund reimbursements, defined as the top two percent in mental ability of school children in grades K through 12.

Merit System

A personnel system in which merit and fitness govern each individual's selection and progress in the service.

National Labor Relations Act, 1935

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 Labors 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.

Necessary Small Schools

Elementary schools of less than 101 ADA and operating two or more schools, and high schools of less than 301 ADA which meet a specified test of remoteness and inaccessibility. Also includes elementary schools of less than 101 ADA in districts which operate only one school without meeting the test of remoteness and inaccessibility. Special foundation programs are provided for these schools.

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 arrangment that requires an employee as a condition of continued employment, either to join the recognize 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. (Sec. 3540.1 i)

Override Tax

A tax in addition to the maximum statutory tax rate of a district as set by the Legislature, the imposition of which must be approved by the voters within a school district.

Permissive Override Tax

A tax levied at the discretion of the school board for a limited number of authorized purposes as set forth in statue. This tax is levied without voter approval, i.e., community service tax, meals for needy students, childrens centers, capital outlay.

Personnel Commission

Three members appointed in accordance with Education Code provisions and responsible for maintenance of the merit system for classified employees.

PL 874 Funds

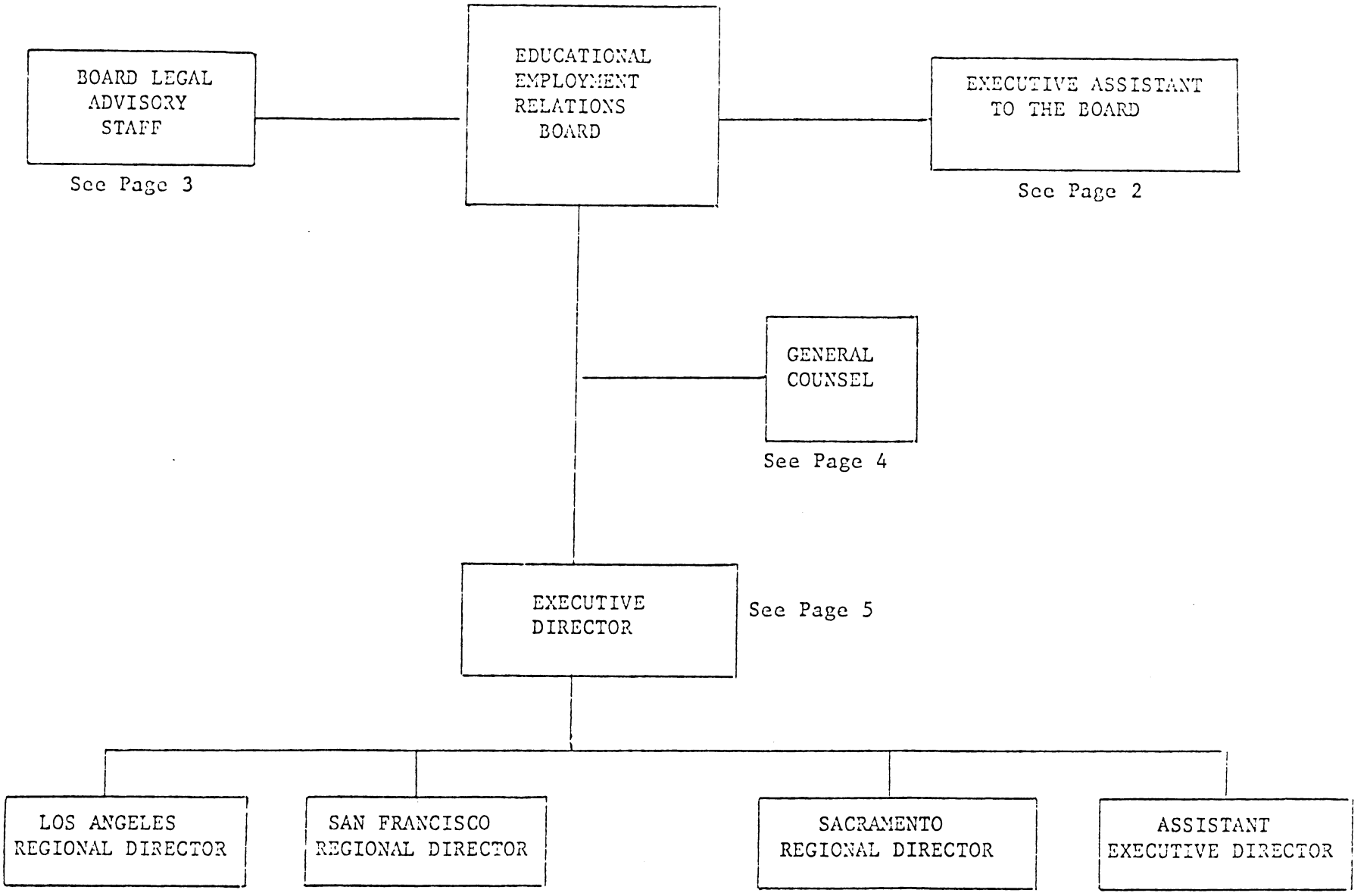
Funds received by school districts from the federal

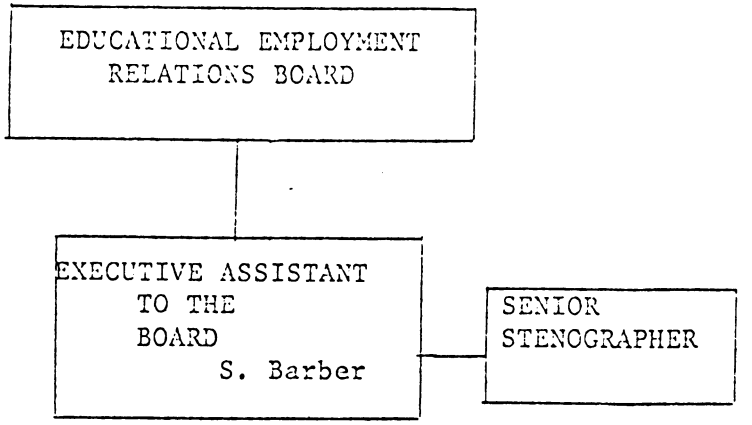
	government because of the "impact" on the district of federally connected school children whose parents either live on or work on federal property, or both.
Recognized Organization	An employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5. (commencing with Section 3544) (Sec. 3540.1 1)
Regular Employee	A person who has probationary or permanent status in the classified service.
Restricted	Positions whose incumbents must be from low-income groups or from designated geographical areas or who have mental handicaps or meet other specified criteria and who are not entitled to employment permanency.
Revenue Limit	The maximum amount of dollars that a district may receive annually for general education purposes from state and local sources.
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 elections. The run-off is between the two contenders receiving the most votes in the first election.
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.
Slippage	Increases in assessed valuation increase the local district's ability to provide local funding. When this occurs, districts replace state equalization aid with local property tax revenues.
State School Fund	A special fund created by the Constitution which is a vehicle through which most of the State support for the public schools is provided. Over 99 percent of its revenue is derived from transfers from the State General Fund and the balance (or about $3.5 million per year) is derived from income from investments in the School Land Fund and the Unclaimed Property Fund. The Constitution provides that the State School Fund shall be apportioned in its entirety each fiscal year.
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.

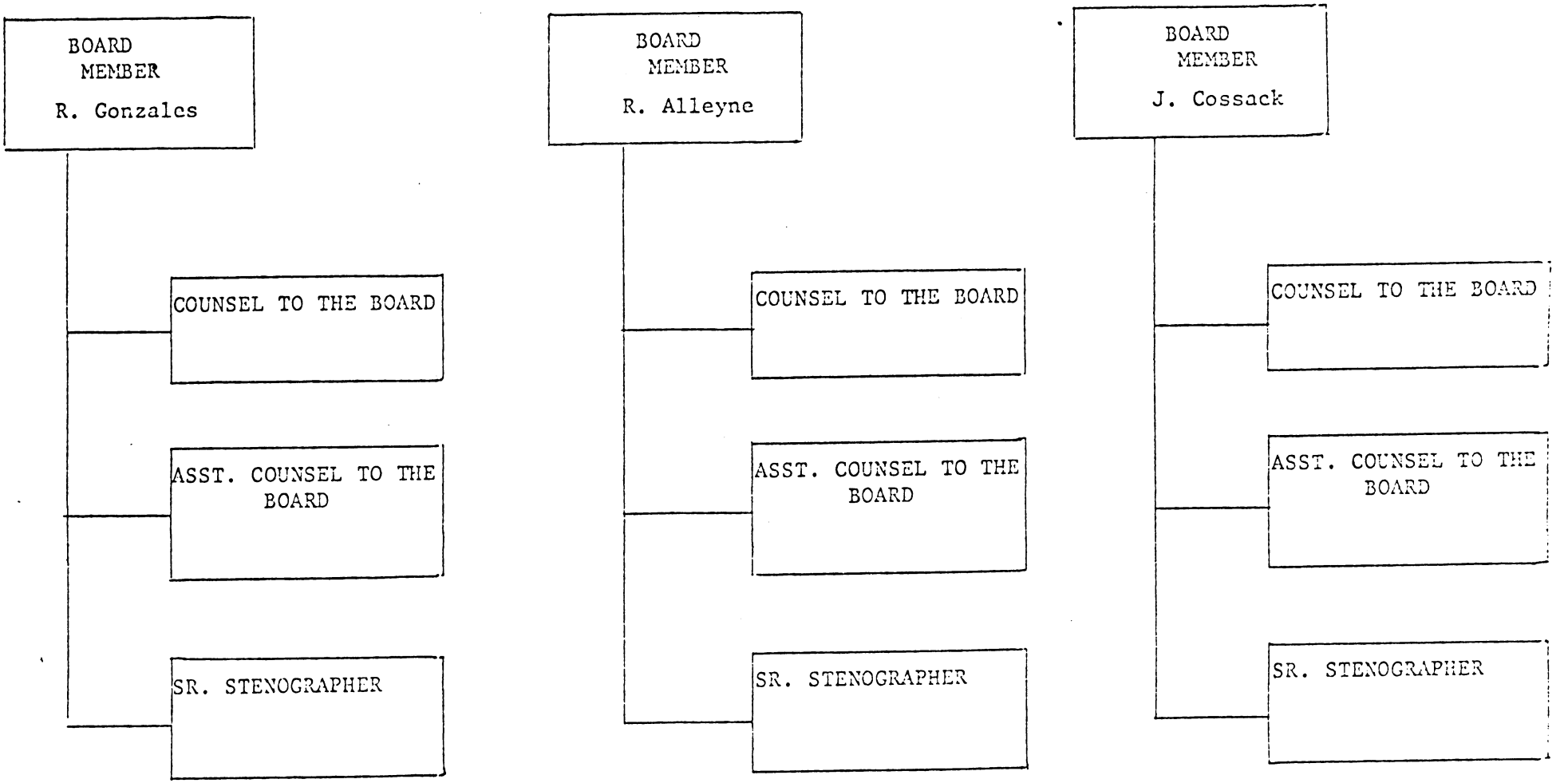
Special Education	The general term used to describe educational and instructional activities carried on for physically handicapped, mentally retarded and severely mentally retarded minors.
Squeeze Factor	School district spending above the foundation program do not receive the entire inflation adjustment that districts below foundation program levels receive. They go through a factoring process by taking the quotient of the prior year's foundation program over the prior year's revenue limit and multiplying by the inflation factor. The effects of this manipulation causes high wealth districts' revenue limits to grow at a slower rate than low wealth districts' revenue limit.
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. (Sec. 3540.1 m)
Tax Override	Override taxes are available to school districts on an optional basis for specific and limited purposes. Some of the purposes are: children's centers, community recreation, state building loan repayment, and construction.
Unclassified Service	Part-time playground positions, full-time day students employed part-time, apprentices, and professional experts and community representatives employed in consulting or advisory capacities on a temporary basis for a specific project.
Unfair Labor Practice	Action by either an employer or union which violates the provisions or 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.
Unification Bonus	A special incentive increase in the foundation program designed to encourage school districts to unify, which is equivalent to $20 times the total ADA in either a unified district or in a district voting in favor of unification in an unsuccessful election. The product is added to the district's foundation program.

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 specific 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."
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.

ORGANIZATIONAL CHART - EDUCATIONAL EMPLOYMENT RELATIONS BOARD




EDUCATIONAL EMPLOYMENT
RELATIONS BOARD
EXECUTIVE ASSISTANT
TO THE
BOARD
S. Barber
SENIOR
STENOGRAPHER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COUNSEL TO THE BOARD
ASST. COUNSEL TO THE BOARD
SR. STENOGRAPHER
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COUNSEL TO THE BOARD
ASST. COUNSEL TO THE BOARD
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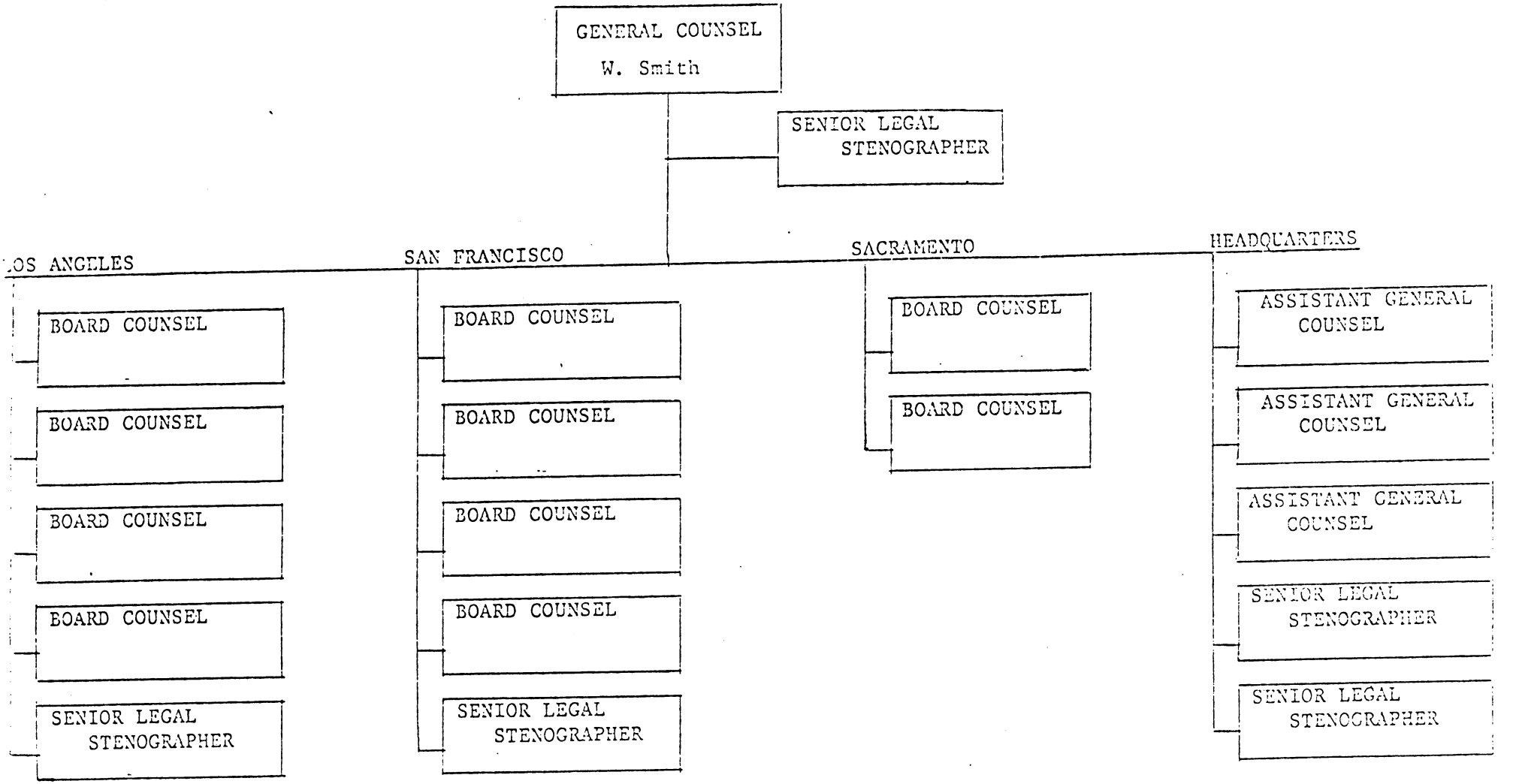
BOARD MEMBER
J. Cossack
COUNSEL TO THE BOARD
ASST. COUNSEL TO THE BOARD
SR. STENOGRAPHER


GENERAL COUNSEL
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SENIOR LEGAL STENOGRAPHER
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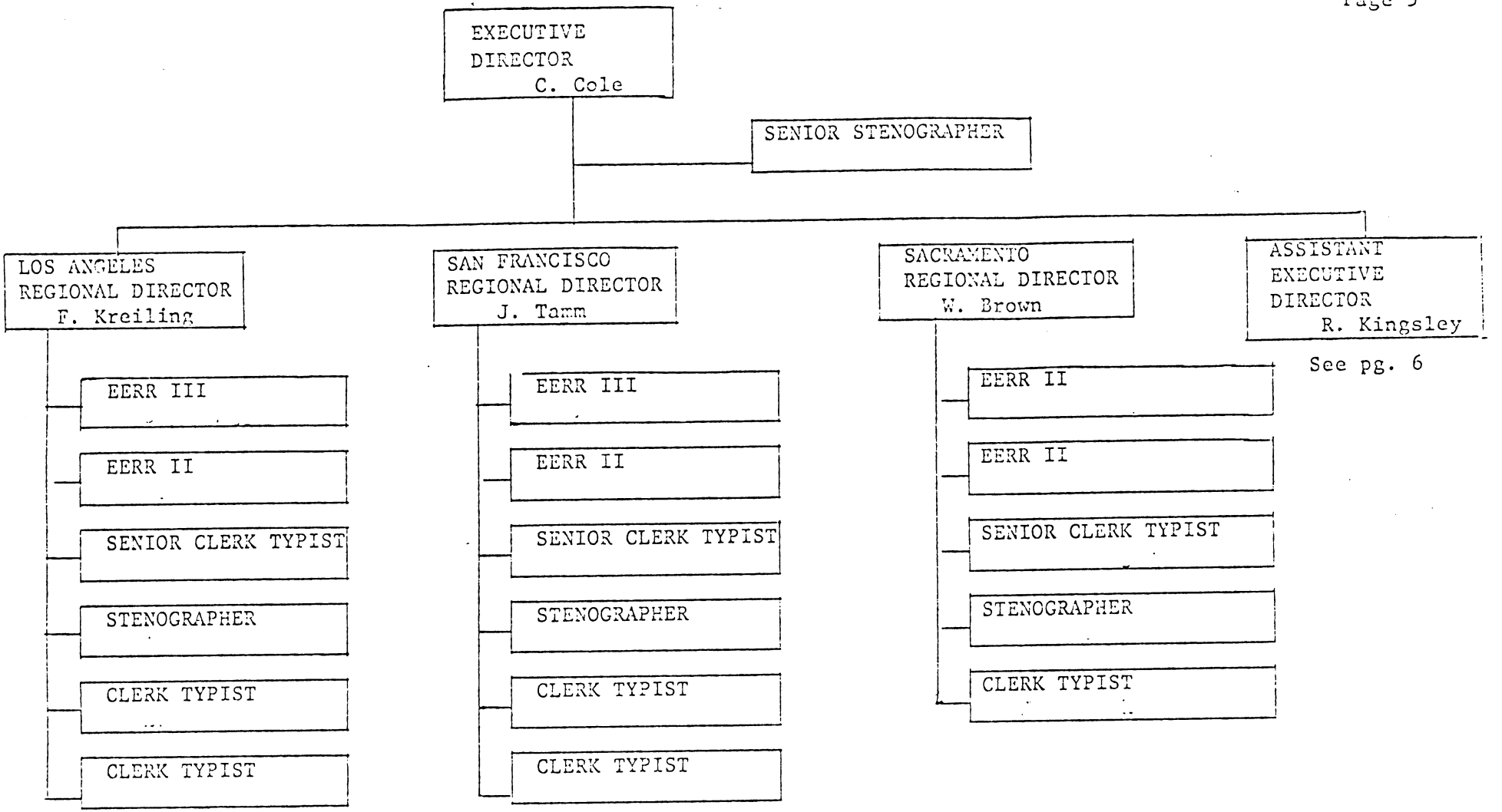
EXECUTIVE DIRECTOR
C. Cole
SENIOR STENOGRAPHER
LOS ANGELES REGIONAL DIRECTOR
F. Kreiling
EERR III
EERR II
SENIOR CLERK TYPIST
STENOGRAPHER
CLERK TYPIST
CLERK TYPIST
SAN FRANCISCO REGIONAL DIRECTOR
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EERR II
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CLERK TYPIST
CLERK TYPIST
SACRAMENTO REGIONAL DIRECTOR
W. Brown
EERR II
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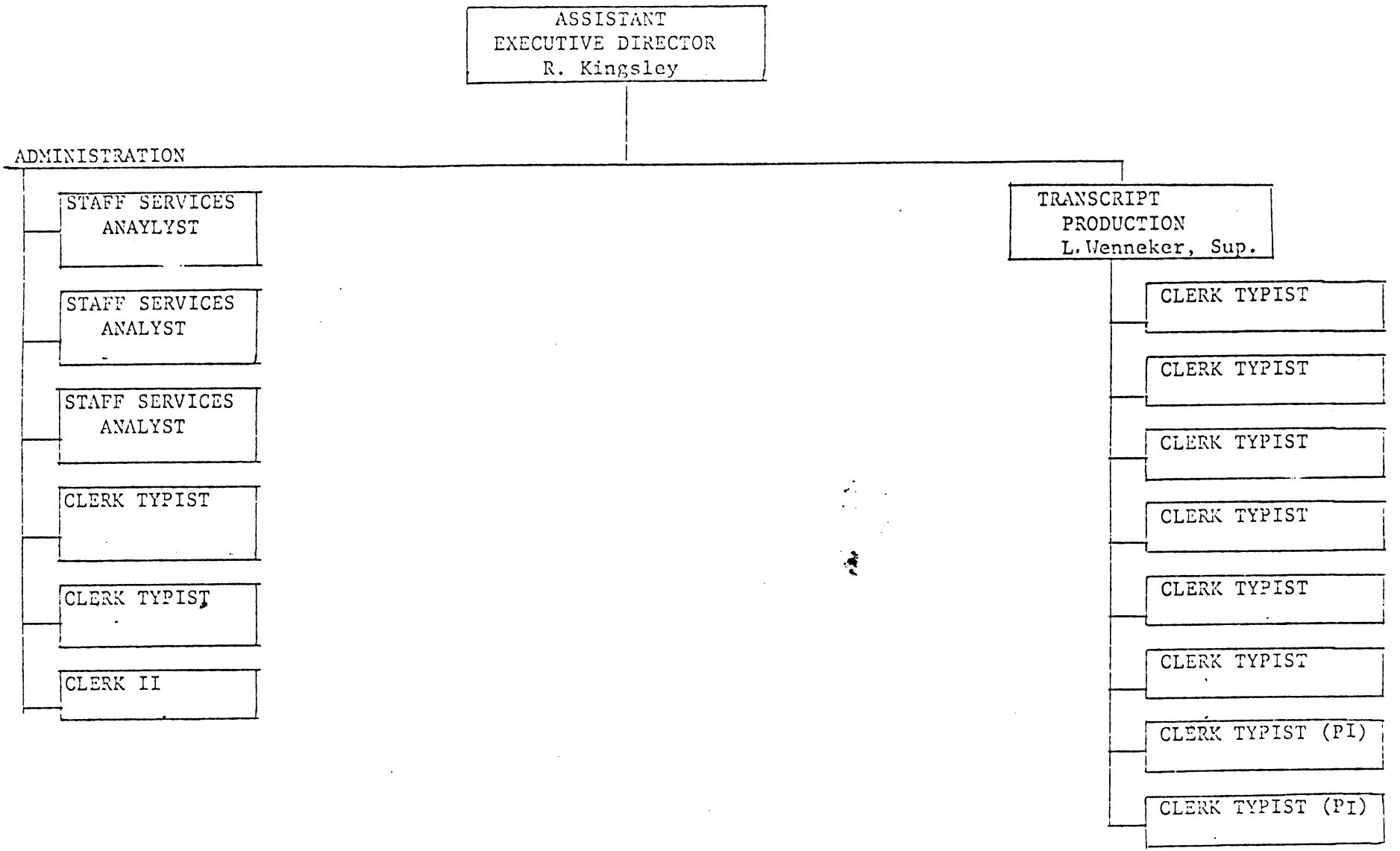
STENOGRAPHER
CLERK TYPIST
ASSISTANT EXECUTIVE DIRECTOR
R. Kingsley

See pg. 6


ASSISTANT
EXECUTIVE DIRECTOR
R. Kingsley
ADMINISTRATION
STAFF SERVICES
ANAYLYST
STAFF SERVICES
ANALYST
STAFF SERVICES
ANALYST
CLERK TYPIST
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CLERK II
TRANSCRIPT
PRODUCTION
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CLERK TYPIST (PI)
CLERK TYPIST (PI)