

VACATED by Order of the Board dated July 10, 1979

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO COUNTY OFFICE OF EDUCATION,)

Employer,)

and)

ASSOCIATION OF CLASSIFIED EMPLOYEES,)

Employee Organization,)

and)

SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL NO. 22, AFL-CIO,)

Employee Organization,)

and)

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
and its SACRAMENTO OFFICE OF EDUCATION,)
CHAPTER 480,)

Employee Organization.)

Case No. S-R-481

ORDER VACATING
PERB DECISION NO. 95

July 10, 1979

The employee organizations' petitions for recognition, the employer's response to the petitions, and Service Employees International Union, Local No. 22, AFL-CIO's statement of exceptions having been withdrawn, and the Board being in accord with the withdrawal, PERB Decision No. 95 is hereby vacated.

This order vacating the decision in this case should not be interpreted to mean that the Board has found or would find the units described in the stipulations agreed to among the parties to be appropriate units in a disputed case.

Public Employment Relations Board
by

J. STEPHEN BARBER
Executive Assistant to the Board



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Case No. S-R-481
 PERB Decision No. 95
 July 6, 1979

Appearances: Robert A. Galgani, Attorney (Galgani, Breon and Godino) for Sacramento County Office of Education; Lisa Walsh for Association of Classified Employees; Wilma K. Rader, Attorney (Van Bourg, Allen, Weinberg and Roger) for Service Employees International Union, Local No. 22, AFL-CIO; Vince Varnas for California School Employees Association and its Sacramento Office of Education Chapter 480.

Before Gluck Chairperson; Gonzales and Moore, Members.

DECISION

This matter is before the Public Employment Relations Board (hereafter Board) on exceptions filed by Service Employees International Union Local No. 22, AFL-CIO (hereafter SEIU) to the hearing officer's decision in a representation case involving the Sacramento County Office of Education. The

exceptions are, in summary, directed to the hearing officer's findings that a comprehensive unit of classified employees is appropriate, and that a separate unit for data processing employees is not appropriate. For purposes of this Decision, the Board adopts the hearing officer's "Procedural History". The Board has considered the record and the attached proposed decision in light of SEIU's exceptions.

The Board is in substantial agreement with the hearing officer's findings of fact and conclusions of law, insofar as they support the hearing officer's conclusion that a separate unit of data processing employees is not an appropriate unit within the meaning of the Educational Employment Relations Act¹ (hereafter EERA). The Board is also in substantial agreement with the hearing officer's finding of fact and conclusions of law, insofar as they support the hearing officer's holdings that the accountant, cook manager, keypunch supervisor and operations supervisor and programmer are supervisory personnel, and that the media technical assistant is a nonsupervisory employee within the meaning of EERA.

However, after a review of the record as a whole, the Board determines that it lacks sufficient information to support a finding as to what is the appropriate unit in this case. The issues of community of interest and appropriate unit developed in the record thus far were limited solely to the dispute as to whether or not a separate data processing unit is appropriate.

¹The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

The hearing officer apparently assumed that the unit was largely composed of office clerical employees, without investigating the nature and duties of other employees in the unit. While we are not so determining, it appears from the record that a substantial number of aides are among the employees in the proposed comprehensive unit. Before a unit determination can be made, the Board must have additional evidence² as to the number and duties of persons who are in aide and operational support classifications, and evidence relating to community of interest, past practice and efficiency of operation regarding employees within the petitioned-for unit.

²The Board requested additional information from the parties pursuant to its administrative authority under Government Code section 3544.7(a). The information received by the Board was subsequently deemed insufficient to clarify the record. The Board thus determined to disregard all additional information received, and to remand the case in lieu thereof. Government Code section 3544.7(a) states in pertinent part:

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; . . .

ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record of this case, the Public Employment Relations Board hereby ORDERS:

1. That the petition of Service Employees International Union, Local 22, AFL-CIO, for a separate data processing unit is hereby dismissed.

2. That the accountant, cook manager, keypunch supervisor and operations supervisor and programmer are supervisory employees within the meaning of section 3540.1(m) of the EERA, and that the media technical assistant is a nonsupervisory employee.

3. That this matter is remanded to the general counsel's office for an expedited hearing on issues related to the appropriateness of a comprehensive unit of classified employees. In the interests of time, no post-hearing briefs shall be accepted by the hearing officer and the parties are directed to make any legal argument orally, and on the record at the hearing. The record should thereafter be transmitted forthwith to the Board itself, for a final determination on this matter.

~~Harry Gluck~~
By: Harry Gluck, Chairperson

~~Raymond J. Gonzales~~, Member

Barbara Moore, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

SACRAMENTO COUNTY OFFICE OF EDUCATION,)
)
Employer,) Representation
) Case No. S-R-481
and)
)
ASSOCIATION OF CLASSIFIED EMPLOYEES,)
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Employee Organization,)
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Proposed decision by Ronald E. Blubaugh, Hearing Officer.

PROCEDURAL HISTORY

This representation case involves disputes about the appropriateness of the negotiating unit in a county office of education and the status of certain employees whom the

employer believes to be supervisors.

The unit question was placed in issue by a series of competing petitions and the employer decision.

On May 7, 1976, the California School Employees Association, Sacramento Office of Education Chapter 480,¹ filed a request with the Sacramento County Office of Education² asking to be recognized as the exclusive representative of all the County Office's classified employees.³ The employer posted a notice of the request on the same day.

¹The California School Employees Association, Sacramento Office of Education Chapter 480, will hereafter be referred to as "CSEA."

²The Sacramento County Office of Education will hereafter be referred to as the "County Office."

³In its petition CSEA described the unit as containing approximately 160 classified employees who occupy the following positions: general utility, multilith operator, typist clerk II (CETA), personnel secretary technician, account clerk III/buyer, credentials technician, typist clerk II, typist clerk II (CETA) [sic], assistant credentials technician, clerk II, clerk I, AV lead technician, cook manager, programmer analyst, programmer trainee (CETA), steno clerk II, research analyst, computer operator trainee (CETA), keypunch operator, supervisor systems and programs, testing technician, EDP supervisor and programmer, school secretary, teacher aide, job placement manager, vocational management analyst, personnel clerk, receptionist/clerk, multilith operator trainee (CETA), accountant, account clerk II, account clerk III, secretary II, account clerk II [sic], assistant accountant, truck driver, clerk I (CETA), cook, janitor II, control clerk (CETA), keypunch operator (CETA), data control analyst, shipping and forms processor, research associate, keypunch operator supervisor, testing specialist, computer operator, clerk III, secretary attendance accounting, instructional aide, career information services specialist.

On June 1, 1976, interventions were filed by the Service Employees International Union, Local No. 22, AFL-CIO,⁴ and the Association of Classified Employees.⁵ SEIU sought recognition as the exclusive representative of employees in a "Data Processing Unit."⁶ ACE, like CSEA, requested a comprehensive unit of classified employees.⁷

⁴The Service Employees International Union, Local No. 22, AFL-CIO will hereafter be referred to as "SEIU."

⁵The Association of Classified Employees will hereafter be referred to as "ACE."

⁶In its petition, SEIU described the data processing unit as containing approximately 25 employees who occupy the following positions: programmer I and II, computer operator, programmer analyst I and II, computer operator (CETA), programmer trainee (CETA), data processing trainee (CETA), shipping and forms processor, key punch operator, key punch operator (CETA), testing specialist, EDP technician-data control analyst, key punch supervisor, testing technician.

⁷In its petition, ACE described the unit as containing approximately 177 classified employees who occupy the following positions: clerk I, clerk II, clerk III, clerk I (CETA), clerk II (CETA), clerk III (CETA), typist clerk II, typist clerk II (CETA), account clerk I, account clerk II, account clerk III, account clerk III/buyer, accountant, assistant accountant, personnel clerk, receptionist/clerk, steno clerk I, steno clerk II, steno clerk III, secretary I, secretary II, secretary III, executive secretary, school secretary, personnel secretary technician, secretary attendance accounting, credentials technician, assistant credentials technician, career information services specialist, job placement manager, control clerk (CETA), keypunch operator (CETA), programmer trainee (CETA), computer operator trainee (CETA), programmer analyst, research analyst, keypunch operator supervisor systems and programs, testing technician, EDP supervisor and programmer, data control analyst, shipping and forms processor, research associate, keypunch operator supervisor, testing specialist, computer operator, instructional aide, teacher aide, AV lead technician, multilith supervisor, multilith operator, vocational management analyst, general utility, janitor II, truck driver, cook manager, cook, warehouse/storekeeper.

In its initial decision of June 10, 1976, the employer did not take a position about the unit question. However, on September 14, 1976, the employer requested a comprehensive unit of classified employees.⁸ The employer and two employee organizations thus seek a comprehensive unit. SEIU seeks a separate unit for data processing employees.

By stipulation, the parties appreciably narrowed the other issues, agreeing to the exclusion of various employees. Under the stipulation, persons occupying the following positions were excluded from the unit as management: director of business services, assistant director of business services, assistant director of educational data processing, consultant and consultant research. Persons in the following positions were excluded as being either management or supervisory: departmental services officer and supervisor (of) systems and programs. The administrative budget analyst was excluded as being

⁸In its letter of September 14, 1977, the County Office described the unit it believes appropriate as containing "all regular classified employees, whether full time or part time" who occupy the following classifications: clerk I, clerk II, account clerk II, typist clerk II, receptionist/clerk, school secretary, secretary I, secretary/attendance accounting, cook, kitchen helper, food service worker, ROP job developer, keypunch operator, computer operator, computer operator trainee, programmer analyst I, programmer analyst II, research analyst, testing technician, assistant credential technician, bookkeeping machine operator, multilith operator, mulilith trainee, instructional aide, teacher aide, A/V equipment repairman, general utility man, utility trainee, maintenance man, janitor II, data control analyst, shipping and forms processor, programmer I, programmer trainee, data processing trainee, research advocate, truck driver, and excluding various employees named as being management, supervisory or confidential.

management and/or supervisory. Persons in the following classifications were excluded as being confidential: executive secretary, secretary III, personnel secretary technician, personnel clerk. The multilith supervisor was excluded as being supervisory and/or confidential. Persons in the following classifications were excluded as being supervisory: cataloguer, cataloguer circulation controller, supervising accountant, and job placement manager. The hearing officer adopts these stipulations without inquiry.

The positions remaining in dispute are: accountant, cook manager, key punch supervisor, operations supervisor and programmer, and media technical assistant. The employer contends each of these positions should be excluded as being supervisory. CSEA contends the positions are not supervisory and should therefore be included within the unit.

A hearing was conducted into these matters on March 25 and April 21, 1977 by EERB Hearing Officer Michael Coder.

LEGAL ISSUES PRESENTED

- 1) What is the appropriate unit for employees of the Sacramento County Office of Education?
- 2) Should the position of accountant be excluded as supervisory?

3) Should the position of cook manager be excluded as supervisory?

4) Should the position of keypunch supervisor be excluded as supervisory?

5) Should the position of operations supervisor and programmer be excluded as supervisory?

6) Should the position of media technical assistant be excluded as supervisory?

THE APPROPRIATE UNIT --- FINDINGS OF FACT

The Sacramento County Office of Education provides educational and administrative assistance to local school districts in Sacramento and surrounding counties. Through the operation of a regional occupational center, a conservation education center, an instructional television activity and certain special education programs, the County Office also provides direct services to children.

A number of these programs are self-supporting in that the County Office receives a fee from the users of the services which covers the cost of their operation. The instructional television effort, which is operated by the County Office under a contract with the Valley Instructional Television Association, is self-supporting. The psychological services program is self-supporting as is the special education operation. The conservation education center at Sly Park, El Dorado County, is financed through charges made to the local

districts which send children there. Library and audio-visual services also are self-supporting.

The data processing employees, which the SEIU seeks to represent in a separate unit, have been significantly affected by events which occurred following the hearing. Because the changes were anticipated, the record developed at the hearing contains much information about the expected effect of the changes.

Prior to July 1, 1977, the County Office data processing section provided computer assistance to some 50 school districts located in about 19 counties. The services included preparation of the payroll and financial statements. Services involving students included grade reporting, scheduling of classes, preparation of guidance reports and testing. The County Office also performed custom-designed research programs for individual districts or county education offices.

Under the provisions of legislation enacted in 1975,⁹ various Sacramento County school districts have formed an Independent Data-Processing Center.¹⁰ The center is governed by an independent board comprised of one representative from each participating local agency and one public member.¹¹ Legislation enacted in 1977 provided that the

⁹Education Code Section 10550 et seq.

¹⁰Hereafter, the Independent Data-Processing Center will be referred to as the IDPC.

¹¹Education Code Section 10551.

IDPC is a separate employer under the Educational Employment Relations Act (Act) and that employees of the IDPC are under the provisions governing the employment of school classified employees.¹²

Testimony presented at the hearing indicates that the IDPC went into operation effective July 1, 1977.¹³ The IDPC has its own central hardware and central staff. The operation is physically housed in the Sacramento County Office of Education building on a lease basis. However, the only connection that the Sacramento County Office of Education has with the operation of the center is through its representative on the IDPC's governing board. The status of IDPC employees is not the subject of this decision.

The IDPC performs computer operations for the various participating agencies. All of the County Office's computer operators and computer programmers were scheduled to be transferred to the IDPC at the time of the July 1 changeover. From a pre-changeover high of 30 employees, the work force in the data processing section retained in

¹²Statutes of 1977, Chapter 213, effective as an urgency measure on June 30, 1977.

¹³The hearing was concluded in late April and plans for the changeover to the IDPC were well developed and already in gradual implementation. There was testimony at the hearing that the administrative change to the IDPC would occur on July 1, 1977 and the full operational change would take place when a new computer was in complete working order about six weeks later. Because of the advanced state of preparations for the changeover by the date of the hearing, the hearing officer will decide this case in light of the evidence about the anticipated effects of the change.

the County Office was expected to drop to 19 employees after July 1, 1977. By the time of the hearing, six of those employees already had made the transfer.

The agencies that cooperated to establish the IDPC have made an initial commitment to fund its operation for seven years. There is no financial commitment after the seven years, but from the testimony at the hearing there is no reason to believe the center will close at that time. Under the enabling legislation it can have an indefinite life span.

According to testimony at the hearing, the County Office has retained a data processing unit following the July 1, 1977 changeover. The data processing unit in the County Office now is comprised of sections for data controls, testing control, shipping, keypunch and consulting. All of the employees who departed for the IDPC worked in the County Office's computer section which now has been abolished. It is assumed that the retained County Office data processing unit is the group SEIU seeks to represent.

The employees who remain in the County Office data processing section perform work that might generally be described as being either technical or clerical. The remaining employees are: data control analysts whose duty is to insure the accuracy of information to be used in computer operation; a testing employee who consults with school districts about testing problems; shipping employees and keypunch operators and consultants.

The employees in the proposed data processing unit are under the supervision of the director of research and data processing who also supervises five research employees who are not sought for the SEIU proposed unit.

The 19 employees who remain in the County Office's own data processing unit have much in common with the other county classified employees. A merit system¹⁴ employer, the County Office has a single set of rules and regulations affecting the working conditions of all classified employees. The County Office personnel commission rules and regulations spell out policies for disciplinary action, leaves, work hours, holidays, salaries, performance reports and other benefits. The data processing unit employees, like the other classified employees, receive the benefits and follow the rules and regulations which are adopted for all employees by the personnel commission.

There is considerable interchange between those remaining County Office employees in the data processing unit and other county classified employees. According to testimony at the hearing, the data processing unit employees

¹⁴Provisions relating to the merit system can be found in Education Code Sections 45240 et seq.

have almost daily contact with County Office employees in the business service, special education and program service departments and the library. Employees in the shipping section have weekly contact with County Office classified employees within the business service department but have no appreciable regular contact with other County Office classified employees. Employees in the keypunch unit have daily contact with classified employees in the business service section, in special education and vocational education. The consultants have daily contact with other County Office employees.

Prior to July 1, 1977, the County Office data processing section was located in a portion of the county education building that was physically secure from the other operations. Doors into the data processing unit were locked and could only be opened by use of a coded card or by a person already inside. There was an intercom system for communications between persons inside the unit and those outside. Distribution of the coded cards was limited to those persons with an actual need for access. Because of this tight security arrangement, employees working inside the data processing unit were limited in their contact with other employees.

There was no testimony at the hearing about whether any of this would change after the IDPC took over computer operations. The hearing officer does not know, therefore, whether the employees remaining in the County Office data processing unit continue to work in the secured area.

Since 1967, the California School Employees Association has had a recognized chapter of employees in the Sacramento County Office of Education. The CSEA has represented data processing employees as well as other classified employees of the County Office. SEIU has represented employees of the data processing unit about grievances within the time since the enactment of the EERA and has made a general salary increase proposal.

There was little evidence presented on what impact the creation of a separate data processing unit would have on the efficient operations of the County Office of Education. The deputy superintendent testified that in his opinion there would be a loss of flexibility in the assignment of employees if the County Office were broken into two units.

THE APPROPRIATE UNIT --- CONCLUSIONS OF LAW

The standards for the determination of an appropriate unit are defined by Government Code Section 3545.¹⁵ Although the Educational Employment Relations Board has applied these standards to a number of cases involving classified employees, the Board has yet to consider a case involving a county superintendent of education. The relevant Board decisions to date all involve school districts.¹⁶ In those decisions, the Board has established three units as presumptively appropriate for classified employees: 1) an instructional aides (paraprofessional) unit; 2) an office-technical and business services unit; and 3) an operations-support services unit.

¹⁵Government Code Section 3545 reads as follows:

(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.

¹⁶Of primary significance are: Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976; Fremont Unified School District, EERB Decision No. 6, December 16, 1976; Foothill-DeAnza Community College District, EERB Decision No. 10, March 1, 1977.

Instructional aides were placed in a separate unit by the EERB because their primary duties involve directly assisting the educational development of students. The key factor was that the aides have an instructional relationship with students which is unlike the relationship other classified employees have with students.

Office-technical and business services employees were placed in a separate unit by the EERB because their job duties are generally clerical and record-keeping work rather than physical labor. They are required to type, operate business machines, maintain files and keep records. They do not have an instructional relationship with students.

The operations-support services employees share a community of interest, the EERB concluded, because their job is to provide a proper physical environment and support services for students. They clean and repair, provide food and transportation.

An examination of the job categories for classified employees within the County Office shows a heavy concentration of positions which -- from their titles -- appear comparable to the office-technical employees unit in Sweetwater. The County Office apparently has few instructional aides and only a few job classifications which might normally be found in an operations-support services unit. No party requested an operations-support services or aides unit and there is no evidence in the record to indicate how many persons occupy the several positions which normally might be in such units.

In Foothill-DeAnza Community College District, the EERB held that "a party may show that a unit which deviates from a presumptively appropriate unit is also appropriate." While there is no precedent for the composition of classified units in a county office of education, it can be anticipated that insofar as the job classifications parallel those in Sweetwater the EERB would find units that are parallel. In the present case, it can be expected that the EERB would find an office-technical and business services unit appropriate. However, if SEIU can demonstrate that some other grouping of employees also is appropriate, under Foothill-DeAnza the EERB would approve that other unit.

The hearing officer concludes that in the present case, SEIU has not demonstrated that a data processing unit may appropriately be separated from the office-technical employees.

In Fremont Unified School District, where the EERB restated its Sweetwater rationale, the EERB placed employees in the following computer-related classifications into the office-technical and business services unit: keypunch operator, data processing clerk, lead keypunch operator, computer operator I, computer operator II, programmer, programmer analyst I and programmer analyst II. This placement was in accord with the EERB's rationale that employees in the office-technical and business services unit perform clerical and record-keeping work rather than physical labor.

They operate business machines and work with words, data and paper.

In the present case, no significant distinction has been made between the duties of the data processing unit and those of the other clerical, technical and business employees. The principal duty of the data processing employees, like that of the clerical employees, is to maintain records, process information and operate business machines. The mostly highly sophisticated jobs in the data processing unit--those of computer programmer and operators--have been transferred to the IDPC. There is nothing in the record to indicate that the remaining jobs have any higher level of sophistication than other County Office classified positions.

There is evidence of common benefits and common lines of supervision for data processing employees and County Office classified employees. There also is evidence of some interchange between the data processing employees and the other County Office employees.

There is no history of separate representation for the data processing employees and what negotiating history does exist shows representation of County Office employees in various job classifications by a single organization. The evidence on how two units would affect the efficiency of operations is too scant to be of any significant weight.

For these reasons, it is concluded that the SEIU's proposed data processing unit is not appropriate.

All other parties propose a single, comprehensive unit for classified employees. Because most of the County Office employees perform jobs that normally would be in a single office-technical and business services unit and because there is no evidence that an operations--support services unit or any other separate unit would be appropriate, the hearing officer concludes that a single, comprehensive unit is appropriate.

THE SUPERVISORY ISSUES --- FINDINGS OF FACT

The Accountant

The accountant, according to the job description, performs accounting and auditing functions of average difficulty, including the examination, analysis, maintenance, reconciliations and verification of fiscal records. The accountant also supervises the work of the accounting and auditing unit.

According to testimony at the hearing, the County Office has two accountants. One accountant is in charge of an auditing unit which has four account clerks. The other accountant supervises two employees in the paymaster unit.

In the hiring of new employees, each accountant interviews the top three candidates for any job opening and then recommends which candidate should be hired. Recently, an employee was hired in the auditing unit and the recommendation of the accountant was followed.

Each accountant completes the performance evaluations of employees within that accountant's unit. No employees have been terminated recently in the accounting units. However, about seven or eight years ago two accounting employees resigned following the initiation of termination proceedings by the accountant. Each accountant assigns work to employees within that accountant's unit. According to the testimony, when the work in the two units is flowing smoothly they are almost self-functioning. The accountants review the work of individual employees, paying closer attention to the work of employees who might be error-prone.

The accountants have recalled employees who were laid off.

The Cook Manager

The cook manager, according to the job description, is responsible for and supervises the preparation, serving and care of food at the Sly Park Conservation and Environmental Education Center.

According to testimony at the hearing, the cook manager sets the schedule for the cooks, supervises the entire food preparation process, orders the food and takes care of the inventory. The cook manager also prepares food and supervises the work of two full-time cooks, one part-time cook and a dishwasher.

Evaluations of employees who work under the cook manager are prepared jointly by the cook manager and the outdoor education specialist who is the principal at the Sly Park Center. The cook manager sits in during the interviews of prospective new employees but there is no evidence about the weight given to the recommendations of the cook manager. The cook manager has no role in the processing of grievances. During the last ten years the cook manager has recommended the dismissal of one employee. Subsequently, dismissal proceedings were conducted and the employee was terminated. The cook manager determines the number of cooks who will work on any given day according to the number of children who will be living at the Sly Park Center on that day.

The Keypunch Supervisor

The keypunch supervisor, according to the job description, supervises the work of the keypunch operators, assists in developing procedural instructions for work performed in the keypunch and verifying units, and maintains clerical controls of work volume and production schedules.

According to testimony at the hearing, the keypunch supervisor is in charge of six employees. When new employees are to be hired for the keypunch operation, the keypunch operator interviews the three top candidates and selects from among them the person who is to be hired.

The keypunch supervisor completes evaluations of the keypunch operators. These performance evaluations are reviewed by the operations supervisor and programmer but the reviewer has no power to change the contents of the evaluation.

The keypunch supervisor has the authority to assign work to the keypunch operators and establish priorities on work flow. The keypunch supervisor also reviews the finished work of each subordinate and makes a running count of their errors. There was testimony that the keypunch supervisor has the authority to initiate the dismissal of employees but there has been no need to seek the termination of any employee in recent years.

The keypunch supervisor has no significant role in the promotion of subordinates or in the handling of grievances.

Operations Supervisor and Programmer

The operations supervisor and programmer, according to the job description, supervises data processing computer operation activities or production control activities. The person filling the job is required to have four years of technical experience in the operation and control of intermediate or large-scale computer systems, including at least one year of supervisory experience.

According to testimony at the hearing, the operations supervisor and programmer is in charge of the overall computer operation and keypunch activities. This includes the work of the control, keypunch computer, shipping and testing sections. There are between ten and twelve employees in the data processing unit who are subordinate to the operations supervisor and programmer. Among the employees within the operations supervisor's control are the keypunch operators. In making assignments of keypunch work, the operations supervisor works through the keypunch supervisor who in turn makes the assignments to the individual keypunch operators.

Evaluations of all operations employees but the keypunch operators are prepared by the operations supervisor and programmer.

The operations supervisor and programmer makes recommendations about the hiring of employees subordinate to him and his recommendations are followed. The director of research and data processing, who is the supervisor of the operations supervisor, testified that he would not resolve grievances in the operations department without the assistance of the operations supervisor.

There was no testimony at the hearing about what impact the July 1, 1977 changeover to the IDPC would have on the duties of the operations supervisor and programmer.

Media Technical Assistant

The media technical assistant, according to the job description, carries out and supervises the check-out and check-in activities necessary for schools to get films, books and other lending materials from the County Office. The media technical assistant works with film booking clerks in the booking and circulation of films. The assistant operates and supervises the film inspection/rewind machines and keypunch machines. The assistant supervises truck drivers who make deliveries. He also is responsible for various repairs of equipment and films.

According to testimony at the hearing, the media technical assistant position was until recently known as the audio/visual lead technician. The position was upgraded and is now paid an additional salary of about \$100 per month. The media technical assistant is in charge of two truck drivers, two film booking clerks and several part-time student clerks.

There is scant evidence in the record on what role the media technical assistant will have in the hiring of new employees. There was testimony that he would have a "recommending role" but there was no evidence about whether his recommendations would be followed.

The media technical assistant completes evaluations of the persons who work under him but there is no evidence in the record about whether those evaluations result in any

kind of discipline or reward. In the last ten years there have been no disciplinary matters involving the employees who work under the media technical assistant. The media technical assistant has no effective role in approving transfers of employees in his department. He likewise has no effective role in either the resolution of grievances or in the dismissal of full-time employees. He can dismiss the part-time students who work in his office.

Work assignments of the employees under the media technical assistant appear not to vary greatly from day to day and so his role in making assignments is somewhat routine.

THE SUPERVISORY ISSUES --- CONCLUSIONS OF LAW

In Government Code Section 3540.1(m) "supervisory employee" is defined as meaning:

. . .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.

In Sweetwater, the EERB considered the meaning of that section and observed that because the law is worded in the disjunctive, an employee need not possess all of the enumerated functions or duties in order to be a supervisor.

The Board held that 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."

In San Diego Unified School District,¹⁷ the Board concluded that a cafeteria manager I was a supervisor because persons occupying that position assigned and directed the work of those under them, effectively recommended disciplinary action, transfers and promotions and adjusted grievances.

In San Diego Community College District,¹⁸ the Board upheld a hearing officer's decision that the position of accountant was not supervisory because the persons holding the job held none of the statutory indicia of supervisory status. No other Board decisions have considered the positions under dispute in the present case.

The evidence produced in this case shows that all but one of the positions in question possess one or more of the functions listed in Government Code Section 3540.1(m).

The position of accountant is held to be a supervisory position because the accounts can and have effectively decided which of three finalists will be hired for job openings in their departments. Moreover, in the only known cases where the accountant recommended termination of an employee, the County Office initiated termination proceedings which became

¹⁷EERB Decision No. 8, February 18, 1977.

¹⁸EERB Decision No. 28, September 16, 1977.

moot only after the employee resigned. The accountants make work assignments to the employees within their units and have exercised the authority to recall employees who were laid off.

The cook manager is held to be a supervisory employee because she has effectively recommended the dismissal of an employee and because she assigns duties to and supervises the work of four other employees. The cook manager also determines which subordinate employees shall work on any given day.

The keypunch supervisor is held to be a supervisory position because the person in that position has effectively decided which of three finalists will be hired for job openings in the keypunch department. Moreover, the keypunch supervisor has the power to assign work to keypunch operators and continually monitors the performance of keypunch operators by looking for errors.

The operations supervisor and programmer is held to be a supervisory position because the person in that position has effectively selected the persons who are hired for jobs in his department. He also has authority in grievance resolution.

The media technical assistant is held not to be a supervisory position and it is therefore included within the negotiating unit. There is no evidence in the record to suggest the media technical assistant has any substantial role

in the hiring or dismissal of any employees except for part-time student interns. The media technical assistant has not been involved in the discipline of any employees or in the resolution of their grievances. He has no effective role in the transfer of employees and possesses no other indicia of supervisory authority.

PROPOSED DECISION

It is the proposed decision 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:

Classified Employee Comprehensive Unit
consisting of all classified employees,
including the data processing unit of
the Sacramento County Office of Education,
but excluding all management, supervisory
and confidential employees;

2. The positions of accountant, cook manager, keypunch supervisor and operations supervisor and programmer are excluded from the unit as being supervisory;

3. The position of media technical assistant is not supervisory and is therefore included within the unit;

4. In accord with the stipulations of the parties, the following positions are excluded from the unit:

Director of business services, assistant director of business services, assistant director of educational data processing, consultant, consultant research, departmental services officer, supervisor of systems and programs, administrative budget analyst, executive secretary, secretary III, personnel secretary technician, personnel clerk, multilith supervisor, cataloguer, cataloguer circulation controller, supervising accountant, and job placement manager.

The parties have seven (7) calendar days from receipt of this proposed decision in which to file exceptions in accordance with Section 33380 of the Board's Rules and Regulations. If no party files timely exceptions, this proposed decision will become final on November 29, 1977, and a Notice of Decision will issue from the Board.

Within ten (10) workdays after the employer posts the Notice of Decision, the employee organizations may demonstrate to the Regional Director at least 30 percent support in the above unit. The Regional Director shall conduct an election 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.*

The date used to establish the number of employees in the above unit shall be the date this decision becomes final unless another date is deemed appropriate by the Regional Director and notice is given to the parties. In the event another date is selected, the Regional Director may extend the time for employee organizations to demonstrate at least 30 percent support in the unit.

Dated: November 17, 1977

Ronald E. Blubaugh
Hearing Officer

*Voluntary recognition requires majority proof of support in all cases. See Section 3544 and 3544.1.