

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Employer,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 960, SAN FRANCISCO SCHOOL ADMINISTRATORS
DIVISION,
Employee Organization,

and

UNITED ADMINISTRATORS OF SAN FRANCISCO,
Employee Organization,

and

SAN FRANCISCO CLASSROOM TEACHERS ASSOCIATION,
CALIFORNIA TEACHERS ASSOCIATION,
Employee Organization,

and

SAN FRANCISCO FEDERATION OF TEACHERS,
AMERICAN FEDERATION OF TEACHERS, AFL-CIO,
Employee Organization.

Case No. SF-R-419

EERB Decision No. 23

September 8, 1977

ApAppearances: Keith V. Breon, Attorney, San Francisco Unified School District;
RuRubin Tepper, Attorney, San Francisco Classroom Teachers Association; Tom Sinclair,
Attorney, Teamsters Local 960; Stewart Weinberg, Attorney, San Francisco Federation
of Teachers Local 61; Reynold Colvin, Attorney, United Administrators of San
Francisco; James E. Ballard, President, San Francisco Federation of Teachers
Local 61; Dennis Chew, Negotiations Consultant, California Teachers Association.

Before Alleyne, Chairman; Gonzales and Cossack Twohey, Members.

OPINION AND ORDER

This case is before the Educational Employment Relations Board on the
International Brotherhood of Teamsters, Local 960, San Francisco School
Administrators' exceptions to the hearing officer's decision concluding
that a unit is appropriate for the purpose of meeting and negotiating,
providing an employee organization becomes the exclusive representative:

Certificated Supervisory Unit, to include all positions designated as Director, Supervisor, Assistant Supervisor, Principal and Assistant Principal, and exclude all members of the Superintendent's Cabinet and the Legal Officer.

The Board has considered the record and the attached proposed decision in light of the exceptions filed and adopts the proposed order.

By: ~~Raymond~~ J. Gonzales, Member

Reginald Alleyne, Chairman

Dated: September 8, 1977

Jerilou Cossack Twohey, dissenting:

I disagree with both the procedural and substantive ruling of the majority in this case.

I

, Procedurally, the majority has apparently, although not explicitly,¹ sustained the Executive Assistant's rejection of the District's exceptions to the Hearing Officer's Proposed Decision. I would reverse the Executive Assistant and consider the District's exceptions on the merits.

The facts in this respect are straightforward. . The Hearing Officer issued the Proposed Decision on June 10, 1977. In the Proposed Decision the Hearing Officer stated that, pursuant to EERB Rule 33380, the parties had seven calendar days from receipt of the Proposed Decision within which to "file" exceptions.

¹ The District did file a bona fide appeal. The majority has not addressed the appeal, it has simply ignored it. Such failure of the majority to inform the District of the disposition of its appeal not only constitutes a denial of due process (Lambert v. California, 355 U.S. 225, 228 (1957)), but also may render the majority order a nullity or may result in the remand of the entire matter (Hadley v. City of Ontario, 43 Cal.App.3d 121, 128-129 (1974); S.E.C. v. Chenery Corp., 318 U.S. 80 (1943)).

The District received the Proposed Decision on June 13, 1977. It deposited its exceptions in the mail on June 20, 1977 and they were received on June 21, 1977. However, the Executive Assistant concluded that in order to be timely pursuant to PERB Rule 33380, they must have been received on June 20, 1977. The District appealed the Executive Assistant's rejection of its exceptions. The appeal is based on two grounds: first, that the size and complexity of the District made ascertaining the governing board's position on whether or not to file exceptions nearly impossible within the time allowed; and second, that United Administrator's response to the exceptions included a response to both the District's and the Teamsters' exceptions.

Teamsters, who had filed timely exceptions of their own, join the District in urging the Board to reverse the Executive Assistant and consider the District's exceptions. The United Administrators urge that the Board sustain the Executive Assistant and reject the District's exceptions.

Rule 33380 provides:

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.

²Neither the San Francisco Classroom Teachers Association nor the San Francisco Federation of Teachers have filed briefs with the Hearing Officer or the Board at any stage of these proceedings. They became parties to this case by virtue of their interest in representing a unit of non-supervisory, non-managerial certificated employees.

(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.

The majority has apparently sustained the Executive Assistant's interpretation of this rule equating filing with physical receipt in the Board's offices. This is an unreasonable and unwarranted interpretation.

It is well-established that an appellate body is generally reluctant to permit minor procedural defects to preclude an examination of an actual controversy.³ This is true in the California courts and even more so in an administrative agency.⁴ In the instant case particularly, where United Administrators, the only party whose position was opposite that of the District, had in fact addressed the District's exceptions, the majority's rejection of this sound and accepted principle is unfounded. Furthermore, the majority's adoption of a rigid and inflexible interpretation of Rule 33380, whose time requirements are at best severe, ignores the obligation of the Board to reconcile the rights of the District and those of the United Administrators.⁵ In this case the United Administrators had, in fact, themselves treated the District's exceptions as timely filed; United Administrators responded to both the Teamster's and the District's exceptions. In these circumstances and given the severe time constraints of the Board's rules, I would have considered the District's exceptions,

3

See Pesce v. Department of Alcoholic Beverage Control, 51 Cal.2d 310, 313 (1958):

⁴See Gibson v. Unemployment Insurance Appeals Board, 9 Cal.3d 494, 108 Cal.Rptr. 1, 509 (1973) where the Supreme Court concluded that the agency and the superior court had erred in denying consideration of the merits of an appeal filed three days late. See also Flores v. Unemployment Appeals Board, 30 Cal.App.3d 681, 106 Cal.Rptr. 543 (1973).

⁵See Gonzales v. State Personnel Board, 76 Cal.App.3d. 364, ___ Cal.Rptr. ___ (1977).

II

Substantively, I disagree with the majority's conclusion that the directors and supervisors are not management employees.

The Teamsters urge that the Board reconsider the interpretation of the definition of management employee contained in Section 3540.1(g) of the EERA as enunciated in Lompoc Unified School District;⁶ United Administrators does not.

Supervisors, by definition, are those who have the authority to hire, fire, transfer, discipline, assign work or effectively recommend any of these actions. Supervisors, therefore, possess significant responsibilities for administering district programs. Management employees are defined by Section 3540.1(g) as those "...in a position having significant responsibilities for formulating district policies or administering district programs." Applying this language literally would mean that supervisors are management employees. Sections 3540.1(j) and 3545(b)(2) grant negotiating rights to supervisors; Section 3543.4 denies negotiating rights to management employees. In reconciliation of these apparently conflicting sections of the EERA, Dr. Gonzales and I, as the majority, concluded in Lompoc that in order to be considered a management employee within the meaning of Section 3540.1(g), one must possess significant responsibility both for administering district programs and for formulating district policies.

The record amply demonstrates, as the hearing officer documented, that the directors and supervisors in the instant case possess great discretion and responsibility for administering district programs. What is at issue here is the discretion and responsibility of directors and supervisors in formulating district policy. The hearing officer concluded, and the majority agreed, that they have no role in formulating policy. I disagree; rather the weight of the evidence establishes that they possess significant responsibility for formulating district policy.

While we should not lightly deprive employees of the rights afforded them by the EERA, neither should we lightly deprive school districts of a sufficient core of management employees to administer its affairs free from any conflict of interest which would arise if such person or persons negotiated as members of an employee organization.

There are 132 schools in the District. The average daily attendance is approximately 68,000. The District employs approximately 4,932 certificated employees.

⁶EERB Decision No. 13, March 17, 1977.

The chief administrative officer of the district is the superintendent. The District is divided along two separate functional lines: instruction and business. Each division is under the direction of a deputy superintendent. There is one associate superintendent who reports to the deputy superintendent of business and one associate superintendent who reports to the deputy superintendent of instruction. The instruction division is further divided into four geographic areas, each under the authority of an assistant superintendent. Some of the directors and supervisors at issue here report directly to the deputy superintendent of instruction; some directly to the associate superintendent; and some to the assistant superintendent. Some of the supervisors report to a director.

There are four areas in which the weight of the evidence establishes that directors and supervisors are significantly involved in the formulation of district policy. While not all of the directors and supervisors perform all of these functions, it appears that most of them perform at least two. First is the evaluation of existing programs. Evaluation includes modification of, addition to or deletion from those programs for which the directors and supervisors are responsible. Directors and supervisors regularly make recommendations about these programs; their recommendations are followed in most cases. Thus, the supervisor of the mentally handicapped testified that he decides that "a particular thing" should be done in the instructional program and submits his recommendations to his superior. He testified that his recommendations have been followed "in most cases." The same supervisor further testified that in a program such as that for the mentally handicapped, "the population is changing considerably" and "therefore, the program direction has to be modified to meet the needs of those children." Another supervisor testified that in the course of administering the contract with an outside agency he independently determines the needs of students and "reinterprets" the contract to procure the desired services. When asked if he sought the approval of his superior before doing this, he testified, "I have been doing this in the course of my job...until someone tells me not to, I will continue to do it."

Second is the development of new policies and programs. A music supervisor testified that he was under instruction from the superintendent to plan for a magnet creative arts school. His responsibilities in this regard consist of coordinating meetings with various interested faculty and community persons and

synthesizing the suggestions and options into a single document which contains recommendations. In other projects his recommendations have generally been followed. Another person, the director of the integration department, testified that she recommended that the current plan to redesign the school district did not meet the requirements of the court-ordered integration plan under which the District is presently operating. Her recommendation to reconsider the redesign plan was not followed. However, she further testified that her recommendation about how "this might be controlled" was adopted by the governing board. In addition, she has taken an active part at governing board meetings on this topic.

Third is the preparation and administration of the budget for various programs. Several directors and supervisors prepare the budget of the programs for which they are responsible, including the guidelines within which the budgets are to be administered. Although once adopted the budget must be administered in accordance with the guidelines approved by the governing board, the guidelines are generally those articulated by the director or supervisor in the original preparation. Thus, the supervisor of the mentally handicapped testified that he prepares a recommended budget which set forth the specific needs of the John L. Roberts Development Center. Once the budget is adopted, his approval is required for the purchase of such items as instructional material, equipment, maintenance and field trips. Another supervisor testified that he prepares five program budgets which are rarely altered; in fact, he testified that "[the budget] pops out of the computer pretty much exactly the way I put it in."

Finally, directors and supervisors prepare and disseminate policy directives. There are at least three ways through which policy formally is articulated in the District: through formal adoption by the governing board and incorporation into a document called "Board Policies," through the regulation manual, and through operational directives. The testimony was contradictory regarding the role played by directors and supervisors in the formulation of "Board Policies" and the regulation manual; however, it is clear from the record that they prepare operational directives in their designated areas. The operational directives may interpret policy, outline various options available under the policy, or evaluate the impact of one policy on another. These directives are used by others to explain a particular program or policy to on-site administrators

and interested members of the community. For example, one supervisor testified that he prepared a policy for the intermediate school program which outlines the types of classes which may be offered and establishes priorities among them.

In sum, directors and supervisors are at the heart of the District's policy formulation. Essentially, their duties consist of making operative the broad policy directives of the governing board and the superintendent. While the governing board and the superintendent establish the skeleton of District policy, directors and supervisors flesh out the detailed characteristics. Furthermore, they generally speak with the authority of their superiors and are clearly understood to do so. Where, as here, directors and supervisors exercise substantial discretion, the process by which broad policies are rendered operational necessarily determines the limits of the policy. The directors and supervisors occupy executive-type positions and are closely aligned with management as true representatives of management. Accordingly, I find them to be management employees within the meaning of Section 3540.1(g) .

Jerilou Cossack Twohey, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:)
)
SAN FRANCISCO UNIFIED SCHOOL DISTRICT,)
)
Employer,) Case No. SF-R-419
)
and)
)
INTERNATIONAL BROTHERHOOD OF TEAMSTERS) PROPOSED DECISION
Local 960, San Francisco School)
Administrators Division)
)
Employee Organization,)
)
and)
)
UNITED ADMINISTRATORS OF SAN FRANCISCO)
)
Employee Organization,)
)
and)
)
SAN FRANCISCO CLASSROOM TEACHERS)
ASSOCIATION, CALIFORNIA TEACHERS)
ASSOCIATION)
)
Employee Organization,)
)
and)
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SAN FRANCISCO FEDERATION OF TEACHERS,)
AMERICAN FEDERATION OF TEACHERS, AFL-CIO,)
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Employee Organization)
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Appearances: Keith V. Breon, Attorney, San Francisco USD; Rubin Tepper, Attorney, San Francisco Classroom Teachers Association; Tom Sinclair, Attorney, Teamsters Local 960; Stewart Weinberg, Attorney, San Francisco Federation of Teachers Local 61; Reynold Colvin, Attorney, United Administrators of San Francisco; James E. Ballard, President, San Francisco Federation of Teachers Local 61; Dennis Chew, Negotiations Consultant, California Teachers Association.

Jeff Paule, Hearing Officer

PROCEDURAL HISTORY

The United Administrators of San Francisco (hereinafter "United Administrators") filed a request for exclusive representation with the San Francisco Unified School District (SFUSD) on April 1, 1976 for a certificated supervisory unit comprised of

principals, assistant principals, supervisors, assistant supervisors, directors and administrative assistants, excluding those employees who are on the Superintendent's Cabinet.

The International Brotherhood of Teamsters, Local 960, San Francisco School Administrators Division (hereinafter "Teamsters") filed an intervention on April 20, 1976 and proposed a supervisory unit nearly identical to the United Administrator's.

The SFUSD filed its decision with respect to the request for recognition and intervention on May 7, 1976 contending that all of the above-mentioned positions are management employees as that term is defined by Government Code Section 3540.1(g).1/

A unit determination hearing in this matter was conducted during October through December, 1976, by Board agent James Pinnell producing over 2,000 pages of transcript.2/

During the course of the hearing, several stipulations were agreed upon by the parties, as follows:

1. That the United Administrators and the Teamsters are
employee organizations within the meaning of the

1/ The pertinent Government Code Sections are:

3540.1(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.

3540.1(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.

3540.1(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.

2/

-/ The San Francisco Classroom Teachers Association and the San Francisco Federation of Teachers became parties to the hearing. Both organizations primarily were interested in a unit of certificated classroom teachers. On February 16, 1977, the San Francisco Federation of Teachers was certified as the exclusive representative of an appropriate unit of classroom teachers following a representation election.

Educational Employment Relations Act (EERA);

2. That all members of the Superintendent's Cabinet are management employees; 3/ and
3. That the position of Legal Officer is managerial.

During the hearing, the Teamsters amended its intervention contending that the principals and assistant principals alone constitute an appropriate unit. Also, during the hearing, the SFUSD maintained that the Director of Administrative Research; Supervisor of Position Control, Salary and Comparability Section; and the Supervisor of Certificated Personnel are management or confidential employees.

ISSUES

1. Whether the International Brotherhood of Teamsters, Local 960, San Francisco School Administrative Division, is an employee organization within the meaning of Government Code Section 3540.1(d).
2. Whether all Principals, Assistant Principals, Directors (excluding those Directors on the Superintendent's Cabinet), and Supervisors (excluding those Supervisors on the Superintendent's cabinet) are management employees within the meaning of Section 3540.1(m).
3. Whether the Director of Administrative Statistical Research; Supervisor of Position Control, Salary and Comparability Section; and the Supervisor of Certificated Personnel, if found not to be management employees, are confidential employees within the meaning of Government Code Section 3540.1(c).
4. Whether, if the positions stated in number two, above, are found be supervisory, these positions constitute an appropriate supervisory unit, and if not, what is an appropriate supervisory unit(s).

3/ The Superintendent's Cabinet consists of the Superintendent, Deputy Superintendents, Associate Superintendents, Assistant Superintendents, Administrative Assistants to the Superintendent, Director of Budget and Finance, Director of Federal and State Programs, Director of Personnel, Director of Budget and Planning, Supervisor of Human Relations, Employee Relations Officers and the Supervisor of Public Information.

DISCUSSION AND
DETERMINATION OF ISSUES

Structure and Organization of the San Francisco Unified School District

Inasmuch as the unit sought to be represented in this case consists of alleged supervisory employees, it is helpful to discuss the structure of the SFUSD as it relates to the positions in dispute herein.

The SFUSD is comprised of 132 schools of which 97 are elementary, 29 secondary and 6 are "special" (i.e., Special Education for the Handicapped). The District has an average daily attendance of approximately 68,000 and there are approximately 4,932 certificated employees of which approximately 280 are in dispute in this case.

The Superintendent of Schools is the highest employee position within the District. The Superintendent works in conjunction with the Superintendent's Cabinet. The Superintendent's Cabinet consists of the Superintendent, Deputy Superintendents, Associate Superintendents, Assistant Superintendents, Administrative Assistants to the Superintendent, Director of Budget and Finance, Director of Federal and State Programs, Director of Personnel, Director of Budget and Planning, Supervisor of Human Relations, Employee Relations Officers and the Supervisor of Public Information. The Superintendent's Cabinet formulates District policy, subject to approval by the school board, on a wide variety of subject matters including but not limited to organization of the District, budgeting of positions, vacation schedules, assignments to various committees, formulation of a grievance procedure, summer school programs and evaluation of special programs within the District.

Prior to the 1976-1977 school year, the District was organized on a city or District-wide basis with separate divisions for elementary and secondary schools. The special schools also operated on a city-wide basis. In 1976, the Superintendent and the Superintendent's Cabinet drastically restructured the city-wide organizational

concept in favor of an "area" concept. 4/ Under the new organizational structure, the District is divided into four areas (or "quads") designated simply as Area I, Area II, Area III and Area IV. Each area contains approximately an equal number of elementary and secondary schools and is supervised by an Assistant Superintendent (commonly called an Area Superintendent).. Each Area Superintendent has four Supervisors who report directly to the Area Superintendent. All other Supervisors employed by the District work in various departments of the District on a district-wide basis. The various departments and their Directors (i.e., Department of Bilingual Education, Children's Center Department, Creative Arts Department) also operate on a district-wide basis. Although the Supervisors and Directors basically operate on a district-wide basis, each is assigned to a particular Area and reports to an Area Superintendent. Some departments operate on a district-wide basis and come under the jurisdiction of an Associate Superintendent (i.e., Department of Integration).

The positions of principal and assistant principal at each of the schools in the District did not change in 1976. Persons holding these positions work at a single school site.

~~Status of Teamsters, Local 960~~

On the 14th day of the hearing, the United Administrators first raised the issue of the status of the Teamsters, Local 960, as an employee organization within the meaning of the EERA.5/ The United Administrators'

4/ It is unclear from the record whether the Board of Education ever formally approved this change. It seems clear, however, that at least at the time of the hearing in this matter, the District was operating under the new "area" concept..

5/ Government Code Section 3540.1(d) states:

"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.

protest comes not only too late but is unconvincing.

The parties, on the first day of the hearing, stipulated that the Teamsters, Local 960, qualified as an employee organization within the meaning of the EERA.. As stated by one leading commentator, "A stipulation is an agreement ... relating to a matter involved in a judicial proceeding. It may relate to evidence or facts, and if it is not in excess of the attorney's authority, and conforms to procedural requirements, it results in a judicial admission removing the issue from the case." (Witkin, California Evidence, Section 505.) (emphasis added)

Even assuming the United Administrator can be relieved from its stipulation, its contention that the Teamsters, Local 960, does not qualify as an employee organization within the definition of Section 3540.1(d) is without merit. The simple fact that the Teamsters, Local 960, has members in the proposed unit and that it filed an intervention in this case seeking to represent certain employees in the SFUSD is evidence enough that the Teamsters, Local 960, has as one of its primary purposes representing SFUSD employees in their employment relations with their employer.

The Teamsters, Local 960, is an employee organization within the meaning of Section 3540.1(d).

Definition of Management Employee under the EERA

Government Code Section 3540.1(g) states as follows:

"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.

The District maintains that according to this statutory definition, management employees include those who have significant responsibilities for formulating district policy or administering district programs. The District argues that the inclusion, in the disjunctive, of those who "administer district programs" in the statute militates in favor of a finding that the positions in dispute in this case are managerial.

The Board considered, in Lompoc Unified School District, EERB Decision No. 13 (March 17, 1977), a decision in which each Board member wrote an opinion, the EERA's unique definition of "management employee", and for different reasons, gave little, if any, significance to the Legislature's use of the disjunctive in Section 3540.1(g). Chairman Alleyne, who wrote the lead opinion, followed National Labor Relations Board precedent in finding that management employees are those "who are in a position to formulate, determine and effectuate management policies." (citation omitted). Member Gonzales, in concurrence, stated that he would consider NLRB and federal case law as "supplemental only" inasmuch as the National Labor Relations Act, as amended, does not define "management employee". He reaches the same conclusion as the Chairman however, by relying on "commonly accepted rules of statutory construction". Member Gonzales stated: "No controlling significance can be ascribed to the Legislature's use of the disjunctive in Section 3540.1(g). The reference to significant responsibilities' in that section modifies both the formulating [of] district policies' and the administering [of] district programs!" (emphasis in original). Member Cossack concurred with Member Gonzales' rationale concerning the construction of "management employee" as set forth in Section 3540.1(g).

Accordingly, the construction to be given the statutory definition of "management employee" is as follows:

A person must possess both of the functions delineated in Section 3540.1 (g) to be found a management employee. (See Oakland Unified School District, EERB Decision No. 15 March 28, 1977. Member Cossack at page 15.)6/

6/ The closing comment by Member Gonzales in Lompoc, supra, is most apropos: "Clearly, a person who has supervisory status has significant responsibility for administering a school district's personnel program (footnote omitted). Yet, nowhere in the definition of 'supervisory employee' as found in Section 3540.1(m) is there any indication that such a person also has significant responsibility for formulating a school district's personnel policy. Therefore to read Section 3540.1(g) in the disjunctive would qualify even supervisors as management employees, which, in turn, would be inconsistent with the legislative grant of negotiating rights to supervisors."

Additionally, as the United Administrators argue, the definition of a "management employee" should be interpreted narrowly. The overall scheme of the EERA supports this construction. Negotiating rights are accorded supervisors under the Act while management employees are not considered public employees (Section 3540.1(j)), and they have no negotiating rights (Section 3543.4). Accordingly, "great care must be exercised in determining who shall be considered a management employee". Oakland, *supra*, at pages 6-7. See also Lompoc, *supra*, page 20.

Burden of Proof

In its post-hearing brief, the District devotes considerable attention to the proposition that "the burden of proof is on the employee organization that challenges the employer's designation of management positions". The District cites no cases in support of this argument, but simply contends that inasmuch as Section 3540.1(g) places the authority in, and the responsibility on, the public school employer to designate management positions (subject to review by the EERB), then the employee organization challenging such designation must prove by a preponderance of the evidence that the positions so designated are not management.

While the Board itself has not squarely confronted the question, of burden of proof in representation cases the hearing officer is not without guidance on this issue.

In Fremont Unified School District, EERB Decision No. 6 (December 16, 1976), Chairman Alleyne, concurring in part, stated that he would require the party alleging a confidential status the burden of proving it by a preponderance of evidence. The same reasoning would apply to management employees since both confidential and management employees are totally removed from the Act's coverage. (Sections 3540.1(j) and 3543.4) In Oakland, *supra*, a three-opinion decision, Member Cossack appears to indicate that the District was unable to show that psychologists who the District had designated as management were indeed management employees.

Finally, in Foothill-DeAnza Community College District, EERB Decision No. 10 (March 1, 1977), a unanimous decision, the Board held that the employer, who had designated certain "grounds foremen" supervisory in order to exclude them from the proposed rank and file unit, had not "sufficiently proven that the foremen exercise any of the activities listed in Section 3540.1(m)....".

It seems clear that the party arguing for exclusion of employees from a proposed unit by designating employees as management so as to exclude them from a unit of supervisory employees, has the burden of proving by a preponderance of evidence that such employees possess the requisite authority and/or exercise the requisite functions and duties to qualify them for exclusion from the proposed unit. In the instant case, the burden of proof properly rests with the SFUSD to demonstrate that the positions it has designated as management are indeed management.

Principals and Assistant Principals

The principals at the secondary and elementary school levels in the SFUSD have no significant responsibilities for formulating district policy. The principals, merely make policy recommendations with respect to the transfer and assignment of personnel, staffing of schools and student-teacher ratios. Although principals often serve on various committees which play a role in formulating district policy, the committees include teachers and, moreover, are purely advisory (see Oakland, supra, page 30). Finally, the principals did not have any significant input in formulating the school district's policies as found in the "Board of Education Policy Manual".

The principals are responsible for the general management of the school. such as supervising the first aid program at the school and setting priorities with respect to custodial repairs. Additionally, the principals' decisions with respect to the assignment of certificated and non-certificated personnel within the school are generally not subject to review. This is the crucial difference: the principals have the authority, and they exercise such authority, to make assignments of personnel and to assign particular duties to employees as long as the principals are complying with established school district policy-policies which have been

formulated by higher level district employees.

The SFUSD has not demonstrated that the principals have significant responsibilities for formulating district policies and accordingly, said positions are not managerial, but are supervisory.

Having found the principals not to be management employees, it follows a fortiori that the assistant principals are likewise not management employees. The issue with respect to the assistant principals is whether they are supervisory.

The evidence adduced at the hearing indicates that the assistant principals at both the secondary and elementary school levels participate in interviews of prospective employees, recommend the transfer of employees, assign work to various para-professionals employed at the school and evaluate teachers and non-certificated employees.

As the Board indicated in Sweetwater, supra, the performance of only one of the enumerated functions in Section 3540.1(m) is sufficient to find the disputed position supervisory. It is found that the assistant principals are supervisors within the meaning of the Act in that they assign work to employees, evaluate teachers and effectively recommend the transfer of employees.

Directors

There are approximately 20 "Directors" employed by the SFUSD. As previously stated, some Directors are in charge of departments which come under the jurisdiction of a particular Area Superintendent, yet the department operates on a district-wide basis. Other departments, such as the departments of Integration, Special Education and Career Education, operate on a district-wide basis also, but the Directors of these departments report to an Associate Superintendent.

Typical of the Directors' responsibilities is the administering and implementing of district programs and policies. The Directors have no role in actually formulating district policy. For instance, the Director of Integration does not determine what the District's policy with respect to the integration of the SFUSD's

schools should be, but rather, the Director effectuates the policy which has been formulated at the Board of Education level. The same is true for the Director of the Bi-lingual Program. This Director does not formulate the bi-lingual program, but does implement Board of Education policies with respect to this program.

The fact that some Directors report to an Area Superintendent and others report to an Associate Superintendent is not significant. The various departments do vary in size, and some Directors occupy "sensitive" positions, such as the Director of Integration, but all Directors are responsible for the overall administration of their particular departments. Dr. Lane DeLara, Associate Superintendent, who has under his direct authority several departments, testified that he delegates to the Directors of those departments the responsibility for the "functioning" of the department. Clearly, this implies that the Directors are responsible for carrying out and implementing the District's policies and programs.

A review of the entire record establishes that the Directors exercise supervisory duties. Generally, the Directors have authority with respect to the assignment transfer and selection of personnel within their departments. Additionally, Directors make decisions regarding the directing and assigning of work to employees under their supervision. When Dr. De Lara was asked whether the Directors under his jurisdiction exercised their "independent judgment" with respect to making these decisions, he answered, "Yes, very definitely."

It is found that Directors have no significant responsibility for formulating district policy and are therefore not management employees within the meaning of Section 3540.1(g). The Directors do exercise at least some of the functions described in Section 3540.1(m) and are, therefore, supervisors within the meaning of the Act.

Supervisors and Assistant Supervisors

The positions of Supervisor and Assistant Supervisor in the SFUSD function either as an "Area Supervisor", who is subordinate to an Area Superintendent, or as a "Supervisor," who is subordinate to a Director of a department. There is only one Assistant Supervisor in the District, who is one of the four Supervisors in the Children's Center Department, and any determination with respect to the status of the other Supervisors in the various departments also applies to the Assistant Supervisor.

There are four Supervisors in each of the four Areas or Quads in the District, and these sixteen Supervisors report directly to their respective Area Superintendent. The "Area Supervisors", as they are sometimes called, function basically the same as department Directors. In fact, one of the "Supervisors" in Area I is designated as a "Director" on the SFUSD's organization chart. The individual who holds this particular position testified that he was not sure whether he was a "Supervisor" or a "Director".

Each Supervisor in each Area has a particular area of responsibility involving either the elementary schools in the Area, or the secondary schools, or one or more of the "special" schools or programs. Common to all Area Supervisors is the assistance they give the Area Superintendents in administering the operational and instructional program of their particular Area. This includes visiting the schools in the Area, making effective recommendations to the Area Superintendent regarding the hiring, transferring and disciplining of employees. The Area Supervisors also evaluate the work of the classroom teachers, assign and direct the work of the employees, and recommend changes in the scheduling of employees.

The sixteen "Area Supervisors" exercise several of the functions enumerated in Section 3540.1(m) and are thus supervisory employees within the meaning of the Act.

In addition to the Area Supervisors discussed above, there are approximately 20 additional "Supervisors" within the District who work in specific departments on a district-wide basis. Having found the Directors of the various departments not to be management employees it follows that the Supervisors, who are subordinate to the Directors, also are not management employees. The issue with respect to the Supervisors is whether they are supervisory employees within the meaning of Section 3540.1 (m). The structure and organization of the various departments within the district varies depending upon the size of the Department and the particular programs the department administers. For instance, the Department of Education has in addition to the Director, three Supervisors. Each Supervisor has a particular area of responsibility, such as Supervisor of Programs for the Mentally Handicapped, Supervisor of Programs for Speech, Hearing and Visually Handicapped and Supervisor of Programs for Educationally Handicapped Youngsters. In other departments the Supervisors are responsible for a particular function within the department. For instance, in the Children's Center Department, one Supervisor handles personnel functions for the department, another Supervisor is in charge of nutrition education, and there is a Supervisor who is in charge of the pre-kindergarten classes.

All Supervisors, however, have the authority to effectively recommend the hiring, assignment and transfer of employees within the Supervisor's particular area of responsibility. Also, many Supervisors evaluate the performance of employees under their jurisdiction and in some instances recommend dismissal or promotion of employees.

The Supervisors employed in the various departments exercise many of the functions listed in Section 3540.1(m) of the Act and are therefore supervisory employees.

Confidential Employees

The SFUSD contends that the positions of Director of Administrative Statistical Research, Supervisor of Position Control, Salary and Comparability Section and Supervisor of Certificated Personnel, if not found to be management, are confidential employees within the meaning of Section 3540.1(c). Government Code Section 3540.1(c) defines a confidential employee to be:

Any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

The evidence with respect to the confidentiality of the above positions was scant. The Director of Administrative Statistical Research performs duties relating to projections of enrollment and this data is subsequently used in negotiations. The Supervisor of Position Control provides records of employees in the District and positions which are available to be filled, and this information is then used in negotiations. The Supervisor of Certificated Personnel's primary responsibility relates to the staffing of the elementary and secondary schools in the district and of the federal and state funded programs. In addition, this Supervisor prepares personnel reports which indicate the number of employees in a given position. None of the three individuals is on the District's negotiating team.

In Sierra Sands Unified School District, EERB Decision No. 2 (October 2, 1976), the Board indicated that a confidential employee is one who has access to or possesses information relating to the employer's employer-employee relations which, "if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture." The mechanical preparation of data and information that is performed by the three individuals in the instant case is even less than the work performed by employees in Sierra Sands, who were

found not to be confidential employees. Nothing in the record demonstrates that the three employees perform duties considered confidential within the meaning of the Act.

Appropriate Unit

The SFUSD contends, in arguendo, that the proposed units are not appropriate because both principals and assistant principals are included in both the United Administrator's and the Teamsters' proposed units.

The Teamsters' proposed unit consists of principals and assistant principals only. It is unclear from the record whether the Teamsters feel that Directors and Supervisors are management employees, or whether Directors and Supervisors are supervisory employees but should be in a separate unit.

Government Code Section 3545(b) (2) disposes of both the District's and the Teamsters' position. This section states that,

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.

The statute is clear and this issue requires no further discussion.^{7/} Having found the Supervisors, Directors, Principals and Assistant Principals to be supervisory employees within the meaning of Section 3540.1(m), a unit comprised of all these employees is the only appropriate unit permitted by Section 3545(b) (2).

^{7/} What is unclear from the statute, but is not an issue in this case, is whether a supervisory unit must include certificated and classified supervisory employees. See Section 3545(b) (3). Both the United Administrators and the Teamsters requested only certificated supervisory employee units.

PROPOSED DECISION

It is the Proposed Decision that:

The following unit is appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative:

Certificated Supervisory Unit, to include all positions designated as Director, Supervisor, Assistant Supervisor, Principal and Assistant Principal, and exclude all members of the Superintendent's Cabinet and the Legal Officer.

The parties have seven calendar days from receipt of this proposed decision in which to file exceptions in accordance with Section 33380 of 8 California Administrative Code. If no party files timely exceptions, this proposed decision will become a final order of the Board on June 22, 1977 and a Notice of Decision will issue from the Board.

Within ten workdays after the employer posts the Notice of Decision the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the above unit. 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) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Dated: June 10, 1977

Jeff Paule
Hearing Officer

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

SAW FRANCISCO UNIFIED SCHOOL DISTRICT,)
Employer)
)
and)
)
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,)
LOCAL 960, SAN FRANCISCO SCHOOL ADMINISTRATORS)
DIVISION,)
Employee Organization)
)
and)
)
UNITED ADMINISTRATORS OF SAN FRANCISCO,)
Employee Organization)
)
and)
)
SAN FRANCISCO CLASSROOM TEACHERS ASSOCIATION,)
CALIFORNIA TEACHERS ASSOCIATION,)
Employee Organization)
)
and)
)
SAN FRANCISCO FEDERATION OF TEACHERS,)
AMERICAN FEDERATION OF TEACHERS, AFL-CIO,)
Employee Organization)
)
)

Case No. SF-R-419
EERB Decision No. 23

The Educational Employment Relations Board directs that:

The following unit is appropriate for the purpose of meeting and negotiating, providing an employee organization becomes the exclusive representative:

Certificated Supervisory Unit, to include all positions designated as Director, Supervisor, Assistant Supervisor, Principal and Assistant Principal, and exclude all members of the Superintendent's Cabinet and the Legal Officer.

Within ten workdays after the employer posts the Notice of Decision, the employee organizations shall demonstrate to the Regional Director at least 30 percent support in the above unit. 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) only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Educational Employment Relations Board

by

Stephen Barber
Executive Assistant to the Board

9/8/77

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

Headquarters Office
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September 9, 1977

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135 Van Ness Avenue
San Francisco CA 94104

San Francisco Classroom Teachers Ass'n.
701 Taraval Street
San Francisco CA 94116

International Brotherhood of Teamsters
Local 960
43 Lansing Street
San Francisco CA 94101

San Francisco Federation of Teachers
AFT, AFL-CIO
655 14th Street
San Francisco CA 94114

United Administrators of San Francisco
P. O. Box 890
San Francisco CA 94101

RE: Case No. SF-R-419

Enclosed is a copy of the Order portion of the decision adopted by the Educational Employment Relations Board concerning the San Francisco Unified School District's exception to the hearing officer's proposed decision dated June 10, 1977.

Upon completion, the full text of the decision will be forwarded to the parties.

Sincerely,

Charles L. Cole
Executive Director

Enclosure
CLC/tz

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