

The hearing officer's decision is substantially in accord with Board precedent. See Grossmont Union High School District.¹ Accordingly, the proposed order of the hearing officer is adopted as the order of the Educational Employment Relations Board.

By: Reginald Alleyne, Chairman

Raymond J. Gonzales, Member, concurring:

I concur with the decision of the Board in sustaining the hearing officer's decision in this case. I do so, not because I have altered my position that counselors and psychologists should have a separate unit for bargaining on the basis of sufficient community of interest, but because in this case there are only 10 counselors in the district. I feel it would impose a hardship on the district and adversely affect the efficiency of operation (see Section 3545(a) of the Educational Employment Relations Act) to require the district to negotiate separately with such a small number of employees.

I hold firm to my dissent as articulated in Grossmont Union High School District² in those cases where a sufficient number of employees would warrant a separate unit given that I firmly believe that a sufficient community of interest will always exist among counselors and psychologists.

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

Jerilou H. Cossack, Member, concurring:

I agree that here, as in Washington Unified School District, EERB Decision No. 27, September 14, 1977, counselors and psychologists should be included in the overall certificated unit not only because they possess a community of

¹EERB Decision No. 11, March 9, 1977. The Board's Grossmont decision may be appealed to the judiciary. The Board denies Placer Guidance Association's motion to "delay any action on the Exceptions to the Hearing Officer's Decision in the Placer Case or any further action on any aspect of the Placer case until a final resolution of the Grossmont case is reached."

²~~Grossmont Union High School District~~, EERB Decision No. 11, March 9, 1977, pages 11 - 24.

interest with other certificated employees but also because there are so few of them.

~~Jeril~~ Jerilou H. Cossack, Member

Dated: September 12, 1977

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

PLACER UNION HIGH SCHOOL DISTRICT,
Employer

and

ASSOCIATED TEACHERS OF PLACER/CTA/NEA,
Employee Organization

and

PLACER GUIDANCE ASSOCIATION,
Employee Organization

Case Nos. S-R-29
S-R-612

EERB Decision No. 25

The Educational Employment Relations Board directs that:

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

A certificated employee unit consisting of all certificated employees including teachers, counselors, and the psychologist; but excluding management, confidential and supervisory employees, adult school teachers and summer school teachers.

Within ten (10) workdays after the employer posts the Notice of Decision, the employee organization 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 the employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

Educational Employment Relations Board

by

Charles L. Cole
Executive Director.

9/12/77

STATE OF CALIFORNIA
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:)
)
PLACER UNION HIGH SCHOOL DISTRICT,)
)
Employer,)
)
-and-) Case No. S-R-29
) S-R-612
ASSOCIATED TEACHERS OF PLACER/CTA/NEA,)
)
Employee)
)
Organization,) PROPOSED DECISION
)
-and-) > June 15, 1977
)
PLACER GUIDANCE ASSOCIATION,)
)
Employee)
Organization.)
)

Appearances: Douglas Lewis, Attorney, for Placer Union High School District; Robert Bryce for Associated Teachers of Placer; and Dr. Thomas C. Agin, Executive Director (California Pupil Services Labor Relations), for Placer Guidance Association.

Before: Michael G. Coder, Hearing Officer.

OPINION

Procedural History

On April 1, 1976, the Associated Teachers of Placer ("ATP") filed a request for recognition as the exclusive representative of a unit of all certificated employees (which arguably include the psychologist in as much as she was not specifically excluded from the unit) excluding management,

supervisory and confidential employees. Also excluded were adult and summer school teachers and counselors. The proposed unit was comprised of approximately 150 employees.

On April 12, 1976, the Placer Guidance Association ("PGA") filed a request for recognition as the exclusive representative of counselors and the psychologist, a unit of **eight employees.**

On May 7, 1976, the Placer Union High School District (the "District" or the "Employer") gave notice that it doubted the appropriateness of both proposed units on the basis that the unit for which ATP petitioned failed to include counselors and that the unit for which PGA petitioned was "so small as to adversely affect the efficient operation of the district."

The petitions were consolidated and a formal unit determination hearing was held November 17, 1976.

ISSUES

1. Is a unit of certificated employees which excludes seven counselors an appropriate unit?
2. Is a unit of seven counselors and one psychologist of such a size as to adversely effect the efficient operation of the school district?
3. What is the appropriate unit placement of the psychologist?

DISCUSSION

The District

The District is located in Placer County and has an average daily attendance of approximately 3,700 pupils. The District maintains four high schools and employs approximately 157 classroom teachers, seven counselors and one

psychologist, for a total of approximately 165 certificated employees.^{1/}

Appropriate Units

In determining the appropriatenesses of any unit, Government Code Section 3545(a) requires the decision to be based on three factors; (1) the community of interest between and among the employees; (2) the established practices of the employees, including the extent to which such employees belong to the same organization; and (3) the effect of size of the unit on the efficient operation of the school district. In applying these factors to the case at hand, it is concluded that a comprehensive **unit of certificated employees is appropriate.**

In defining "community of **interest,**" the Educational Employment Relations Board in Sweetwater Union High School District² and Grossmont Union High School District³ cited those factors used by the National Labor Relations Board: qualifications; method of wages or pay schedule; hours of work; fringe benefits; supervision; frequency of contact with other employees; integration with work functions of other employees, and interchange with other employees.^{4/}

The credential requirements for teachers are different from the credential requirements of counselors and the psychologist. As was noted in Grossmont, supra, all certificated personnel are generally required to possess a bachelors or higher degree plus specialized training. The specialized training for teachers consists of a fifth year of academic training and an approved program of professional preparation.^{5/} The specialized training for the counselors

^{1/} This figure does not include the following positions which were stipulated to be management: superintendent; assistant superintendent; administrative assistant for personnel; director of special services; principals; vice principals; athletic directors; and student activity directors.

2/ EERB Decision No. 4, November 23, 1976.

3/ EERB Decision No. 11, March 9, 1977.

4/ Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1974).

^{5/} Education Code Section 44259.

and the psychologist requires either (1) a fifth year of academic study, approved professional preparation, field experience including classroom contact, **.and passage of an examination**, or (2) possession of **a valid license or certificate appropriate to the service to be rendered and one year of experience.**⁶ These differences between the teachers and counselors are no greater than among teachers themselves.

Additionally, all of the permanent employees who are the subject of PGA's petition, except Bart Connolly, possess credentials entitling them to teach in the District. With the exception of Connolly and the psychologist, the permanent employees are all tenured as classroom teachers within the District.^{7/} Moreover, at least nine teachers also hold a full or partial General Pupil Personnel Services Credential. As was found by the Board in Oakland⁸ and Grossmont, the slight differences which may exist in training, skills and qualifications of counselors, teachers and psychologists are not significant.

Both the District and PGA cite recent decisions construing prior Education Code Sections 13314 and 13314.3 (now Education Code Sections 44893, 44894, 87454 and 87455) which concern reassignment rights.^{9/} PGA incorrectly contends that, by these decisions, the Courts of Appeal have recognized the uniqueness of the pupil personnel positions. The District argues that the reassignment rights of these personnel to classroom teaching positions establish a community of interest

⁶ Education Code Section **44266.**

⁷ Evidently there were two temporary employees of the District, Kim Cagle and Chris Kenna, within PGA's petition. Kim Cagle is an adult school counselor for six hours per week. Chris Kenna is employed through the end of the 1976-1977 school year pursuant to a Federal Vocational Education Grant.

⁸ Oakland Unified School District, EERB Decision No. 15, April 19, 1977.

⁹ Adelt v. Richmond School District, 250 Cal.App.2d 149 (1967), Lacy v. Richmond Unified School District, 13 Cal.3d 469 (1975), Netwig v. Huntington Beach Union High School District, 52 Cal.App.3d 529 (1975).

with the classroom teachers. Inasmuch as six counselors have tenure as classroom teachers, the District's contention is more nearly correct. Counselors, since primarily hired from the Employer's own teaching staff, have significant seniority within the District. Teachers who might selfishly urge that first staff reductions should be at the expense of the counselors would be dissuaded from such a position in this District because counselors would replace them as teachers and teachers with the lowest seniority would be the subject of the lay-offs.

There is substantial interaction between the teachers and the counselors and psychologist. All use the same parking facility, lunch, lounge and physical facilities. Counselors and teachers are required to work identical hours. Counselors and the psychologist are often called upon to mediate between teacher and pupil. Their goals are the same: to maximize the students' learning experiences. Any potential conflict which may arise as a result of this mediation is speculative at best. Even if such a conflict exists, it is not pertinent to employee-employer relations.

The psychologist, counselors and teachers are all on the same pay scale. All certificated employees receive additional compensation based on experience, advanced degrees or college credits which they have earned. A counselor whose credential may have required more academic training is compensated for that extra training in the same manner as an instructor with additional units. Differences in compensation between pupil service employees and teachers are due to the fact that extra days of service are required of counselors and the psychologist. The extra compensation is a prorated amount for the additional duty time that would be earned by a teacher of similar training and experience. All certificated employees receive the same fringe benefits.

Teachers and counselors are directly supervised by the principal of the school to which they are assigned. They are evaluated by the principal in a similar manner pursuant to the Stull Act, Education Code Section 44660 et seq. The

psychologist is supervised and evaluated by the director of special services pursuant to the Stull Act. The employment, transfer and grievance policies of the District are the same for all certificated employees.

Based on the total record, it is found that teachers, counselors and the psychologist share a substantial- community of interest.

Established Practices

The PGA was not established until the 1975-1976 school year. Prior to that time some counselors of the District were members of the Sierra Foothills Counselors Association, a multi-district organization with members from Nevada Joint Union High School District, Sierra College, Roseville High School and some elementary school districts,

PGA received one seat on the Certificated Employees Council (CEC). PGA attended few meetings of the CEC and offered no proposals but rather was content to await the outcome of this representation hearing.

All persons who serve exclusively as counselors and the psychologist are members of PGA,

Despite its unanimous membership of persons who are exclusively counselors, the recent formation of the PGA and its insignificant involvement in the CEC preclude a finding favorable to the PGA based on established practices of the employees. The inference is clearly contrary to PGA's position: the psychologist and the counselors have been successfully represented for a considerable period of time by a CEC comprised exclusively of ATP members.

The Psychologist

The issue of the psychologist's proper unit is resolved inasmuch as it is concluded a single comprehensive certificated negotiating unit is appropriate.

Efficiency of Operation

No party to these proceedings has urged that multiple certificated units would aid the Efficient operation of the District. The District restricted its evidence to the contrary proposition while PGA sought to rebut that contention, urging additionally that conflicting representational interests mandated a separate counselor-psychologist unit. The resolution of this dispute would not affect the result of this decision. Accordingly, the issue of efficiency of operation is not addressed .

PROPOSED DECISION

It is the Proposed Decision that:

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

A certificated employee unit consisting of all certificated employees including teachers, counselors, and the psychologist; but excluding management, confidential and supervisory employees, adult school teachers and summer school teachers.

The parties have seven (7) calendar days from the 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 June 28, 1977, and a Notice of Decision will issue from the Board.

Within ten (10) work days after the employer posts the Notice of Decision, the employee organization 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 the employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

DATED: June 15, 1977

Michael G. Codeer
Hearing Officer

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

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September 13, 1977

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RE: Placer Union High School District, S-R-29, S-R-612 - EERB Decision No. 25

Enclosed is a copy of the Order adopted by the Educational Employment Relations Board concerning Placer Guidance Association's exception to the hearing officer's proposed decision dated June 15, 1977.

Sincerely

Charles L. Cole
Executive Director

CLC/tz
Enclosure

cc Richard Garland
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