STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

SAN DIEGO COMMUNITY COLLEGE DISTRICT, Employer and CLASSIFIED EMPLOYEES ASSOCIATION OF SAN DIEGO COMMUNITY COLLEGE DISTRICT, Enployee Organization and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 102, AFL-CIO, Employee Organization	Case Nos. LA-R-16 LA-R-17 LA-R-173 EERB Decision No. 28 September 16, 1977

Appearances: Timothy K. Garfield, Deputy County Counsel, for San Diego Community College District; William J. Bauer for Classified Employees Association of San Diego Community College District; Michael J. Posner for Service Employees International Union, Local 102, AFL-CIO.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION AND ORDER

This case is before the Educational Employment Relations Board on exceptions to the attached proposed hearing officer's decision. The exceptions by Service Employees International Union, Local 102, are addressed to all aspects of the hearing officer's proposed order. The Board has considered the record and the proposed decision in light of the exceptions.

We are in substantial agreement with the hearing officer's proposed decision and his use of precedents of this Board. Accordingly, the hearing officer's proposed order is adopted as the order of the Educational Employment Relations Board.

By: Reginald Alleyne, Chairman

Raymond Gonzales, Member

Jerilou H. Cossack, Member

Dated: September 16, 1977

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

SAN DIEGO COMMUNITY COLLEGE DISTRICT, Employer,	
and	Case No. LA-R-16 LA-R-17 LA-R-173
CLASSIFIED EMPLOYEES ASSOCIATION OF SAN DIEGO COMMUNITY COLLEGE DISTRICT, Employee Organization,	
and	EERB Decision No. 28
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 102, AFL-CIO, Employee Organization.	

The Educational Employment Relations Board directs that:

1. The job classifications of administrative aides, systems analyst programmers, accountants, junior accountants, and buyers are not eligible for self-determination as a unit of "professional" employees.

2. The office-technical unit shall be amended to include administrative aides, systems analyst programmers, accountants, junior accountants, and buyers.

3. The following employees are not either supervisory or confidential within the meaning of Government Code Section 3540.l(c) and Section 3540.l(m) : Administrative aides, systems analyst programmers, accountants, junior accountants, and buyers.

4. Challenged voter Mary Davis was an employee on leave of absence on the eligibility cutoff date and is an eligible voter,

5. The following employees casting challenged ballots are employees within the unit eligible to vote and their ballots shall be counted:

   Lewis Acord, Charles Alexander, Elizabeth Thunnell, Jacqueline Wilson, Seodello Martinez, Leroy Culver, Ruby Liddle, William Mayne, Ruthy Ofina, Marylou Sundstrom, Roland Villarba, Helen Robinson, Jake Hovland, Henry Little, Robert Irwin, and Mary Davis.

The regional director is requested to open the following challenged ballots stipulated to be counted by the parties:

Mary L. Richardson, Dorothy Smith, Enrique A. Rivera, Britta Lien, Roberta Metcalfe, Gabie Jack.

Educational Employment Relations Board

by

CHARLES L. COLE
Executive Director

9/16/77

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: SAN DIEGO COMMUNITY COLLEGE DISTRICT, Employer, and CLASSIFIED EMPLOYEES ASSOCIATION OF SAN DIEGO COMMUNITY COLLEGE DISTRICT, Employee Organization, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 102, AFL-CIO, Employee Organization.	Representation Case No. LA-R-16 LA-R-17 LA-R-173 PROPOSED DECISION ON CHALLENGED BALLOTS AND UNIT CLARIFICATION ISSUED: April 19, 1977

Appearances: Timothy K. Garfield, Deputy County Counsel, for San Diego Community College District.

William J. Bauer for Classified Employees Association of San Diego Community College District.

Michael J. Posner for Service Employees International Union, Local 102, AFL-CIO.

Before Terry Filliman, Hearing Officer.

OPINION

PROCEDURAL HISTORY

Following the filing of requests for recognition and interventions, the parties stipulated to four appropriate classified employee negotiating units: (1) an operations unit, (2) an office-technical unit, (3) a security unit, and (4) a food services unit. A representation election was held on December 1, 1976, in each of the four units and a majority of validly cast votes was obtained in

all units except the office-technical unit. Prior to the election, the parties had agreed that all voters holding certain job classifications within the office-technical-unit would be challenged.1/ It was further stipulated that if the challenges were sufficient in number to determine the outcome of the election, a hearing would be held to determine the eligibility status of the voters and to further resolve the status of all persons in the job classifications for which voters were challenged. At the conclusion of the election the tally of ballots showed the following results:

San Diego Community College District - office-technical unit.

Approximate number of eligible voters	-	383
Void ballots	-	0
Votes cast for SEIU, Local 102	-	109
Votes cast for Classified Employees Association	-	120
Votes cast for no representation	-	19
Valid votes counted	-	248
Challenged ballots	-	30
Valid votes counted plus challenged ballots	-	278

No party to the election received a majority of the total number of ballots counted and challenged in the office-technical unit. Therefore, the challenged ballots were sufficient to affect the results of the election.

Prior to the date of this hearing the parties met and mutually reduced the number of challenged ballots from 30 to 16. Of the 14 challenged ballots resolved by the parties, eight ballots were excluded[2] and six ballots were stipulated to be counted.[3]

1. Joint Exhibit #41, Agreement entered into on August 6, 1976 and approved by EERB.

2. The ballots agreed to be excluded: Susan Chappellet, Sandra Saldano, Barbara L. Kahan, Antonio M. Fernando, Geraldine Wessberg, Phillip Prather, Joyce Kohlhepp, Bonnie D. Scates.

3. The ballots agreed to be counted: Mary L. Richardson, Dorothy Smith, Enrique A. Rivera, Britta Lien, Roberta Metcalfe, Gabie Jack.

The six ballots stipulated as valid have been held by the regional director pending the outcome of this decision. By including the six additional ballots, a current tally of ballots would read as follows:

Valid votes counted	-	254
Challenged ballots	-	16
Valid votes counted plus challenged ballots	-	270

Even if the six ballots are counted no party could receive a majority of the votes cast. Thus a determination of the remaining challenges is necessary.

Of the 16 pending challenged ballots, 15 votes are challenged by all parties on the basis of disputed job classifications mentioned earlier. They are:

Administrative Aides	Acord, Lewis Alexander, Charles Thunnell, Elizabeth Wilson, Jacqueline
Systems Analyst Programmers:	Martinez, Seodello A. Culver, Leroy
Accountants:	Liddle, Ruby Mayne, William Ofina, Ruthy Sundstrom, Marylou Villarba, Rolando
Junior Accountant:	Robinson, Helen
Buyers:	Hovland, Jake Little, Henry Irwin, Robert

One voter, Mary Davis, was challenged based upon voter eligibility due to her employment status.

Pursuant to agreements of the parties, this decision will address the resolution of (1) whether the above challenged ballots should be counted; and (2) whether the job classifications of administrative aide, systems analyst programmer, accountant, junior accountant and buyer should be placed in the office-technical unit.

At the commencement of the hearing, Classified Employees Association (hereinafter referred to as CEA) and the San Diego Community College District (hereinafter referred to as District), moved that an additional determination should be made as to the classifications of pupil accounting technician and budget technician since all parties had stipulated that the ballots of any employee holding these positions should be challenged and their status determined in the same manner those persons holding positions in dispute at the hearing. The hearing officer denied the motion on the basis that since no incumbents exist in the two job classifications, and thus no employees cast a ballot, a determination of their status in this hearing was inappropriate.

ISSUES

1. Does the Educational Employment Relations Act 4/ require a determination of whether certain employees are "professional employees" as that term is defined by federal statute and case law; does the Act further mandate a self-determination vote by "professional employees"? If so, are administrative aides, accountants, junior accountants, systems analyst programmers, and buyers qualified to be classified as "professional employees"?

2. Are administrative aides either confidential or supervisory employees?

3. Are systems analyst programmers confidential employees?

4. Are accountants and junior accountants either confidential or supervisory employees?

5. Are buyers either supervisory or confidential employees?

6. Are the persons in the above classifications who cast challenged ballots eligible voters?

7. Was Mary Davis an eligible voter on the eligibility cutoff date indicated in the directed election agreement?

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4. Government Code section 3540 et seq., hereinafter referred to as EERA or Act.

DISCUSSION

I. PROFESSIONAL EMPLOYEES

Service Employees International Union, Local 20 (hereinafter SEIU), contends that administrative aides, systems analyst programmers, accountants, junior accountants, and buyers are "professional employees" as that term is commonly used under the National Labor Relations Act and therefore are required to be excluded from the office-technical unit until such time as they make a self-determination vote. The District claims that the "professional employee" distinction does not exist under the Educational Employment Relations Act, and furthermore that such employees have no separate community of interest. CEA takes the position that the employees do not meet the educational and other requirements to be "professional employees."

Section 2, Subdivision 12, of the National Labor Relations Act (29 U.S.C, sec. 152(12) defines "professional employee" as:

> Any employee engaged in work (1) predominantly intellectual and varied in character as opposed to routine, mental, manual, mechanical, or physical work; (2) involving the consistent exercise of discretion and judgment in its performance; (3) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (4) requiring knowledge of an advanced type in the field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee who (1) has completed the courses of specialized intellectual instruction and study described in clause (4) of subdivision (a), and (2) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 9 of the National Labor Relations Act (29 U.S.C, sec. 159(b), relating to appropriate bargaining units provides in part:

> (b) The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided that the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion of such unit: . . . (Emphasis added.)

Further a line of National Labor Relations Board cases is cited listing qualifications necessary to become a professional employee under that statute. SEIU cites other NLRB cases and one Myers-Milias-Brown Act case 5/ mandating separate "professional units" in support of its claim. The argument continues that based upon decisions of the California Supreme Court,6/ the EERB must look to the federal law for guidance in order to correctly interpret the EERA.

While the Educational Employment Relations Board has indeed recognized that in interpreting the EERA cognizance should be taken of the decisions of the National Labor Relations Board interpreting identical or similar language in the National Labor Relations Act,7/ the argument that it is bound by such precedent to create a "per se" rule declaring that professional employees have a separate community of interest and are entitled to a self-determination vote prior to inclusion in any non-professional unit cannot prevail.

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5. Alameda County Assistant Public Defenders Assoc. v. County of Alameda, 33 Cal.App.3d 825. The case does not appear to be persuasive as it interprets Government Code section 3507.3 which authorizes professional employee separate unit status. Additionally the court required an evaluation of community of interest factors to grant a separate professional employee unit rather than mandating such a unit.

6. The Firefighters Union v. City of Vallejo, 12 Cal.3d 608 (1974), and Social Workers Union, Local 535 v. Alameda County Welfare Department, 11 Cal.3d 382 (1973).

7. See, Los Angeles Unified School District, EERB Decision No. 5, November 24, 1976, fn. 1. "While we are not bound by NLRB decisions, we shall take cognizance of them, where appropriate. Where provisions of California and federal labor legislation are parallel, the California courts have sanctioned the use of federal statutes and decisions arising thereunder, to aid in interpreting the identical or analogous California legislation."

A comparison of the two statutes reveals why. Section 3545 [8] of the Act serves a role parallel to section 9 of the NLRA in providing statutory criteria for determination of the appropriateness of bargaining units. Beyond this vague similarity of purpose, the unit determination language of the two statutes clearly cannot be construed as so similar as to require a mandatory reference to NLRB unit determination case law. As an example, section 9, subdivision (b), provides the NLRB with no statutory standard to determine the appropriateness of bargaining units.[9] Section 3545 on the other hand established specific standards in subdivision (a) including community of interest, established practices, extent of organization, and effect of size of the unit of efficient operation of the employer.

Section 9, subdivision (b), specifically provides that the NLRB shall not include within an employee unit any group of professional employees unless a majority of such employees vote for inclusion in a unit. Similar exclusions are provided for craft units, and units of guards. The term "professional employee" is not included within the definitions of the EERA provided in Section 3540.1. The only mandatory exclusions from the broad criteria for determination of appropriate units set forth in section 354 5(a) appear to be the exclusion of certificated employees from classified employee negotiations units and the exclusion of supervisory units as provided in subsection 3545(b). No exclusion of professional employees is mandated by section 3545 or any other provision of the Act.

A contention is raised that the absence of a definition of "professional employee" and a mandatory exclusion provision in the Act resulted from a legislative oversight. A decision to propose a mandatory restriction upon the power of the Board to interpret unit criteria must rest upon the clear, unambiguous terms contained in the statute. Therefore, this argument cannot be upheld.

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8. All future references are to the Government Code, unless otherwise stated.

9. The NLRB has established community of interest standards by case interpretation. These standards have, where applicable, been applied by the EERB. See Oakland Unified School District, EERB Decision No. 15.

This is not to say that a distinct unit of "professional employees" could never exist under the EERA. In an appropriate future case, the Board could, in the absence of a statutory mandate, determine that a certain group of employees such as professionals, craft workers, or guards have such a compelling "community of interest" by reason of common education, duties, or skills as to create a presumption favoring an ongoing separate unit status or a self-determination vote. Such a presumption would presumably be based upon an evaluation of the unit criteria in Section 3534(a) in the same manner as the three classified employee units (Office-Technical, Operations-Support, Paraprofessional) have been determined to be presumptively appropriate by the Board in Sweetwater Union High School District[10] and later cases.

A presumption favoring a professional employee unit cannot be found in this case given the facts in the record and the arguments propounded by the parties. Firstly, no employee organization has petitioned to represent a separate unit of professional employees. No party requested such a unit at either the original unit determination hearing in the present matter.

SEIU contends that the disputed employees should be excluded from the office-technical unit on the basis that a "professional unit" should be deemed to be appropriate and be separated until an organization demonstrates an interest in representing the employees. After rejecting the contention that a professional unit is mandated by federal law, the presumption could be created only by evidence supporting separation under the "community of interest" or other unit criteria.

Here the employees hold positions similar to those included in the "office-technical unit" in Sweetwater.[11] The Sweetwater established units for

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10. EERB Decision No. 4, November 23, 1976

11. Ibid.

classified employees remain presumptively appropriate. The office-technical unit stipulated to by the parties in the present case including the disputed positions is similar to other units found appropriate by the Board. In rebuttal the record reveals that the challenged employees are placed in designated job classes not eligible for premium overtime pay extended to other classified employees. The only other evidence presented details the educational attainments of each employee. While the hearing officer need not now decide whether administrative aides, buyers, programmers are "professionals" based upon NLRB case law, it is questionable whether the facts presented could support a finding that the employees possess sufficient required educational background, specialized knowledge and perform technical work to be so characterized.[12] In the absence of further evidence supporting a lack of community of interest with the office-technical unit, no separate unit of employees may be created. Furthermore, without a showing by an employee organization that it proposed to represent a group of employees who because of their uniqueness should have a right to self-determination and have expressed an interest in a choice, this hearing officer could not consider proposing a presumption in favor of self-determination by a separate "professional employee" unit.

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12. No party contended that the employees, if not professionals, should be characterized as "technical employees" entitled to a self-determination vote under NLRB case decisions similar to the right of professional employees. It should be noted that while the NLRB formerly took the position that all technical employees should be automatically excluded from units of non-technical workers upon objection, the current policy requires separation of technical employees only upon a case-by-case analysis of "community of interest" factors. Sheffield Corp., 134 NLRB 1101, 49 LRRM 1265 (1961); The Budd Company, 136 NLRB 1153, 49 LRRM 1956.

II. CONFIDENTIAL AND SUPERVISORY ISSUES

SEIU additionally claims that the ballots of the fifteen persons in the alleged "professional classes" who voted should be excluded on the basis that those positions are either confidential, supervisory, or both. CEA counters that all disputed employees are members of the unit and their ballots should be counted. The District takes no position on this matter.

A discussion of individual challenged voters as confidential employees is undertaken with the following precedent in mind.

Section 3540.l(c) of the Act defines confidential employee as:

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

In interpreting this section, the Board has stated that an employer should be allowed a nucleus of individuals to assist the employer in its employer-employee relations.[13] On the other hand, it must be considered that those employees designated as "confidential employees" are exempted from coverage under the Act and lose all rights and privileges of other "public school employees."[14] Challenged voters and incumbents in the job classifications of administrative aide, systems analyst programmer, accountant, junior accountant, and buyer are alleged to be confidential employees. As set forth below, challenges as to all individuals excepting Mr. Leroy Culver, systems analyst programmer, on the basis of access to confidential information are clearly not supported by the record. Mr. Culver, while presenting a closer case, is also determined not to be a confidential employee.

A determination of the supervisory status of challenged voters is made on an individual or job classification basis considering the following factors.

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13. Fremont Unified School District, EERB Decision No. 6, December 16, 1976.

14. Sierra Sands Unified School District, EERB Decision No. 2, October 4, 1976.

Supervisory employees are defined by section 3540.l(m) as:

> Any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Board has determined that this section is written in the disjunctive; therefore an employee need not possess all enumerated functions or duties to be a supervisor. The possession of any one of the duties or the effective power to recommend such action through the use of independent judgment in the cases presented thus far has been sufficient.[15] Voters in the job classifications of administrative aide, accountant, and junior accountant and buyer were challenged as supervisory employees.

ADMINISTRATIVE AIDES

The District employs seven administrative aides. One aide, Mr. Conrad Garner, was stipulated to be included in the unit. Two administrative aides did not vote in the election. The votes of four administrative aides were challenged. No testimony indicated that the duties of the two nonvoting aides are substantially different than those at issue. Administrative aides are employed in the District to provide information and assistance to directors or administrative assistant II's who serve in management positions and to administrative assistant, I's who serve in supervisory positions. The aides in dispute are used generally as technical writers, to provide legislative analysis to generate research analyses, and to provide cost effectiveness studies. The position is an entry level one. Promotions

15. Sweetwater Unified School District, supra; San Diego Unified School District, EERB Decision No. 8, February 18, 1977; Foothill DeAnza Community College District, EERB Decision No. 9, March 1, 1977; Oakland Unified School District, Decision No. 15, March 28, 1977.

may be made to administrative assistant, personnel analyst, budget analyst, or accountant dependent upon the department which the aide serves. Administrative aide positions are transferable within the District. While the job description states that an incumbent's responsibilities might include the training and evaluation of work of other individuals, the record does not cite any instances of such activity. No testimony reveals that any of the administrative aides hire, transfer, suspend, layoff, recall, promote, discharge or discipline or recommend such action with respect to other employees. The only apparent contention is that certain employees may assign or direct the work of clericals sufficient to be supervisory or have access to certain employer policies or other confidential materials and are confidential.

Considering the individual aides challenged as voters, Lewis Acord is a technical writer working for the director of administrative services. He edits and drafts district policies and procedures which are ultimately adopted by the administration and/or the governing board. He does not create the substantive policy contained in his drafts. He shares one secretary with another administrative aide. The secretary reports directly to an office supervisor. In the course of drafting policies he does edit policies regarding personnel matters and the behavior of employee organizations in the collective bargaining process.

Another aide, Elizabeth Thunnell, assists the director of administrative services by preparing analyses of legislative bills pending in Congress and the state legislature. While her analyses may deal with legislation affecting negotiations, her summary is a factual one and does not include recommended action. In addition she indexes opinions for the deputy county counsel retained by the district. She shares a secretary with Mr. Acord.

Charles Alexander prepares statistical analyses of demographic data related to students and residents in the community college district. He is not involved in assigning work to or hiring any clerical employees.

Jacqueline Wilson is employed in the business and accounting division as a cost effectiveness analyst. She conducts time and motion studies funded by grants to the District. While her studies classify the kinds and amount of work that each job classification is expected to perform, the studies do not relate to the setting of salaries or other employee negotiations. She does not directly give assignments to any clerical staff.

No administrative aide has been shown to have regular and direct access to information used in the negotiation process. By its decisions, the Board appears to have adopted a definition of "information used in employee-employer relations" which is somewhat narrower than any information relating generally to District policies or personnel matters. None of the administrative aides possess any of the criteria necessary to be a supervisory employee. Therefore, the position of administrative aide shall be included in the unit and Lewis Acord, Elizabeth Thunnell, Charles Alexander, and Jacqueline Wilson are eligible voters.

SYSTEMS ANALYST PROGRAMMERS

Two persons cast challenged ballots as systems analyst programmers —Seodello Martinez and Leroy Culver. They are claimed to be confidential employees. No testimony was introduced that other systems analyst programmers performed duties substantially different than the two employees.

A systems analyst programmer is employed to rate programs and develop systems in computer language. The position is an entry level one which may lead

to associate systems analyst programmer and ultimately senior systems analyst programmer. Data processing in the District is divided into two sections, the key punching department and the systems analyst department. Each section is headed by a senior systems analyst programmer who is a confidential employee. The senior systems analyst programmer is the project leader who generally makes direct contact with members of the administrative staff to determine the information requested from a computer program or to interpret the results of the program. The systems analyst section is further broken into two areas: (1) student personnel data and (2) payroll, personnel and financial data. Martinez serves in the student personnel section and Culver in the financial area.

The financial data section of the systems analyst department has been requested to provide information related to the salary structure and classifications of employees within the District. Such a request is generally referred to the senior systems analyst programmer (confidential employee), but might be referred by him to a systems analyst programmer. The programmer's function is to write a program to extract statistical information regarding salaries and classifications from the county office of education which operates the computer. The evidence is vague as to the frequency of these requests and as to whether the information obtained is public information and/or is no more than a compilation of existing known facts.

In addition, the data processing manager testified that within the past year the office in general has had access to confidential personnel payroll information. Prior to the past year requests were made directly from the personnel office to the San Diego city schools which retained the information for this District. No testimony indicated the frequency of access to this information by any systems analyst programmer.

SEIU contends that any access to budgetary information for salaries and fringe benefits of classified employees by the systems analyst programmers is synonymous to "access to information relating to his employer's employee relations" within the definition of confidential employee. In Sierra Sands[16] the Board stated:

> The fact that the . . . employees may calculate the cost of proposals hardly suggests that they perform cost evaluations giving them information relating to their employer's employer-employee relations. The mechanical act of calculating costs does not necessarily provide clerical support personnel with confidential knowledge pertaining to the employer's position on bargaining matters or other information regarding the employer's employee relations.

In the present case the testimony has demonstrated generally that systems analyst programmers have some contact with personnel information and develop programs utilizing wage and fringe benefit information. Such a finding does not lead to a designation as confidential employees for the following reasons:

(1) Access to personnel matters is not necessarily related to "employer-employee relations";[17]

(2) The making of computer runs of prerequisite statistical information without additional evidence appears closer to compiling data than evaluating data; and

(3) No evidence has shown that the regular duties of the employees include access to confidential employer-employee relations information.

It is concluded that the systems analyst programmers are not confidential employees within the meaning of the Act. Soedello Martinez and Leroy Culver are eligible voters.

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16. Sierra Sands, supra, at p. 6.

17. Ibid, at p. 6.

ACCOUNTANTS

Ruby Liddle, William Mayne, Ruthie Ofina, Marylou Sundstrom, and Rolando Villarba cast challenged ballots as accountants. No other persons exist in the job classification. They are challenged on the basis of either being confidential or supervisory employees. The hearing officer finds that despite conflicting testimony that none of the accountants are confidential or supervisory employees.

The accounting department consists of 17 classified employees. It is one of three departments organized under the director of business services who is a management employee. The department is headed by the accounting manager (senior accountant) who is also a management employee. The department is divided into four sections: internal audits, general accounting, special projects accounting and A.B.S.O. accounting. Each section is headed by an accountant and, with the exception of internal audits, contains one to two additional account clerks. General accounting and special projects accounting are further subdivided into two specialty areas, each containing one accountant and one to two additional employees. The business services director also oversees the purchasing department (including buyers in dispute) and the budget department. The secretary to the business services director and the budget analysts within the budget department are designated confidential employees.

In general the accountants keep daily records regarding the business operations of the District, including ledgers, worksheets, and other necessary data. The accountant heading the general accounting section is Ruby Liddle. Mrs. Liddle is a general accountant who maintains the District ledger including the receipts journal, the disbursements journal and subsidiary worksheets. Working with Mrs. Liddle is a payroll clerk who handles payroll distribution and assists with general accounting duties. Ruthie Ofina is the accountant in charge of one subdivison of special projects. Her responsibility covers financial aids,

grants and loans to students. Two clerks are assigned to Mrs. Ofina to maintain approximately 3,325 student accounts. The clerks maintain the accounts and process documents which support the payment of funds to students. Marylou Sundstrom is also an accountant in special projects responsible for processing payments by the Veterans Administration to students enrolled in the community college. Mrs. Sundstrom is assisted by an account clerk whose duties include the posting and recordkeeping of checks received from the federal government and contacting eligible students to receive endorsements for their grant funds. William Mayne serves as the internal auditor who audits District accounts. He works independently and is the only member of the internal audit section.

The testimony indicates that Rolando Villarba in operating the A.B.S.O. account section operates a program independent of all other District accounting functions. His duties are performed for an independent Auxiliary Business Services Organization which makes policy decisions relating to the operation of college book stores and food service operations. He performs a commercial accounting service unlike the governmental accounting duties performed by the other accountants. He is assisted by two clerical employees who process claims from commercial vendors and verify other banking statements. All accountants are eligible for straight time overtime pay as are other "exempt" employees, some of whom are classified as management or supervisory.

In the broad sense all accountants do have access to information regard" ing wages, fringe benefits, cost of District programs and other financial data which could be described as information relating to employer-employee relations. It is clear, however, that the accountants do not make projections as to future costs which relate to employer or employee negotiations proposals. Such work is

performed by budget analysts who are designated confidential employees. It has also not been shown that accountants as a regular part of their duties provide information other than documentation of current computations all of which would be public records under the State Public Records Act.

Testimony given by the director of business services inferred that Mr. Villarba might be required to report information regarding the book stores or food services used in negotiations. The senior accountant, Mr. Villarba's direct supervisor, clarified that the information relating to the auxiliary business services was not confidential, but was instead data subject to public inspection. Without more evidence none of the accountants can be designated confidential employees.

The issue of whether a technical or "quasi-professional" employee such as an accountant, who performs complex work alongside of a trained assistant who is delegated more routine work, is a supervisor is one of first impression under the Act. Prior supervisory decisions by the Board have related to either certificated employees or to operations employees who have exercised direction over five to ten or more subordinates.[18]

Further complicating the matter in this case is the rather broad use of the term "supervising" in concept by District policy and through testimony by management employees. While testimony by both the wage and salary administrator and the director of business services indicated that they considered all accountants to be in charge of their assigned clerks, the hearing officer relies more heavily upon the testimony of Mr. Dexter Lacy, the accounting manager, who appears to be the direct supervisor of the employees. Mr. Lacy by way of clarification refuted

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18. Head custodians, school secretaries - Sweetwater UHSD, supra; area cafeteria manager, cafeteria manager 1, building services supervisor, head gardener - San Diego USD, supra; department heads, curriculum specialists - Lompoc USD, EERB Decision No. 13, March 17, 1977.

earlier testimony that the accountants possessed authority to hire, discipline, grant leaves of absences, and formally approve overtime.

A review of each of the job descriptions of professional-technical employees listed in the District salary schedule[19] reveals that every employee is expected in some sense to supervise or to be called upon to supervise clerical or trainee assistants. In fact the class description of many clerical employees including account clerks II, III and IV mention the supervision of other clerical employees. Only a small percentage of the employees with job descriptions listing duties including supervision have been stipulated to be supervisors under the Act.

All accountants act as reviewers in filling out evaluations for the account clerks serving in their section. Evaluations are forwarded to the director of business services for approval. No evidence was presented indicating whether any disciplinary or promotional action resulted from the evaluation. The record indicates that other nonsupervisory employees in the District also fill out evaluations for other employees. While the authority to grant sick leave and overtime rests with the director of business services, such authority has been informally passed through the accounting manager to each individual accountant. The accounting manager explained that the accountant did not actually approve sick leave but merely was the person to whom the clerical called in to report an absence. In addition, overtime could be proposed for clericals by an accountant but was independently approved by the manager. The District is a merit employer and accountants individually have no authority to hire, transfer, suspend, layoff, promote, recall, discharge or discipline clerical employees. No witness indicated that the accountants have ever recommended such action. The accountants do not adjust grievances of the clerks. The director of business services appoints a three to five person committee to fill a vacant position. The committee need

19. Joint Exhibits #7-24A.

not necessarily include the accountant in the section where the vacancy exists. A final employment decision is made by the director of business services.

The closer question must address whether each accountant assigns or directs the work of a clerical employee to an extent that and of the nature that his or her authority requires the use of independent judgment. The accounting manager testified that Ruby Liddle spends approximately five percent of her time assigning work to the payroll clerk. The remaining work performed by the clerk appears to be of a routine nature. The clerks serving with Ruthie Ofina work independently processing a high volume flow of grants and aids documents. Mrs. Ofina has a separate set of duties and spends approximately ten percent of her time directing the work of the clerks. The duties performed by the clerks assisting Marylou Sundstrom also involve routine high-volume operations. Mrs. Sundstrom performs separate duties and evaluates individual items of work approximately five percent of the time.

The testimony of the wage and salary administrator, the director of business services, and the accounting manager attempted to distinguish the authority of Mr. Villarba from the other accountants. While he receives no pay differential, a proposed organization chart identifies Mr. Villarba at least informally as an accounting supervisor. Due to the nature of the commercial accounting program involved, much of the work differs from other general accounting functions. Much of the weight given to his implied supervisory status is summarized by the following testimony of the accounting manager:

> [A] I would say that his duties are strongly supervisory for the reason that he receives very minimal supervision from me . . . .[20]

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20. Transcript volume II, p. 57, line 17.

The hearing officer finds that the nature of Mr, Villarba's relationship with his own supervisor is not compelling in the view of other evidence that his assignment of duties to clericals appears no less routine than assignments made by other accountants. It appears that each of the clericals in question, once trained, perform their duties independently a vast majority of their work time. They consult with the accountant only in exceptional situations. Policy issues requiring a substantial degree of independent judgment would be referred to either the accounting manager or the director of business services,

A literal reading of the supervisory statutory criteria could require that each technical employee who is assisted by a secretary or works as a team with other clericals be designated supervisory on the basis that they effectively recommend one of the following: (1) assignment or direction of work based on the delegation of any duty more complex than simple typing or filing; (2) authorization of time off if the clerical calls in sick to them; or (3) discharge if they file a first evaluation on the employee's performance.

In Sweetwater, the Board declined to designate a school secretary as supervisory in part because "day to day operation does not require the school secretary to make specific work assignments,"[21] In the present case there is no question but that accountants have some responsibility to direct other employees. Yet, the accountants spend 90 percent of their time performing independent duties. No showing was made that the salary range of the accountants reflected any additional compensation for supervisory duties. The accountant appears to be more akin to a skilled worker who provides assistance when a question arises by a paraprofessional who is otherwise doing high volume routine work. The testimony of the wage and salary administrator seems to best describe the so-called "supervisory" relationship of the accountants.[22]

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21. Sweetwater UHSD, supra, at p. 16.

22. Transcript volume I, p. 80, lines 5-25.

[Hearing officer] Q. Would you estimate the amount of time that an accountant who does supervise clerical personnel spends in that supervisory function?

[Manges] A. It's difficult to estimate, but it's a relatively small portion of time compared to an individual whose primary responsibility is supervision or office management. In this case, an Accountant who supervised other people typically would have one or two at the most other clerical staff working for him or her who did fiscal clerical activity such as posting ledgers and maintaining records. Their activities are self-generating in that they have a — they would have an ongoing responsibility to keep a certain set of records and to process a certain kind of document and the responsibility of the Accountant in that area, let's say, accounts receivable, would be to train new individuals coming into the position and to provide leadership and to answer technical questions of — where a person was unsure as what to do and to do the types of things like, you know, you're coming in late and you're not taking as many breaks as you should or you're taking too many and that type of thing.

A final factor to be considered is the supervisor-employee ratio within the accounting department which would result from designating the accountants "supervisory." The department would consist of two management employees, five to seven supervisors,[23] and six to eight employees. While not a controlling factor, NLRB precedent appears to require a closer scrutiny of positions when the number of proposed supervisors is disproportionately large.

In the face of the recognition that designation as a supervisor does not deprive a worker of all rights as an "employee" under the Act, the hearing officer nevertheless determines on the basis of all testimony presented that all the accountants are not supervisors based upon the following factors:

1. The inconclusive evidence supporting authority to effectively evaluate clericals;

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23. Two additional non-accountants hold positions in subdivisions of the department with identical responsibilities with respect to other clericals.

24. Commercial Fleet Wash., 77 LRRM 1156 (1971).

2. The insignificant percentage of time spent in assigning and directing work;

3. The high volume and routine nature of the duties performed by the clericals, and

4. The disportionately large number of supervisors which would result from the designation.

JUNIOR ACCOUNTANT

The District employs one junior accountant--Helen Robinson. The job description for junior accountant[25] states "under immediate supervision, performs beginning level professional accounting duties . . . . Unlike the descriptions of a majority of other technical employees, the junior accountant description nowhere mentions any supervisory duties.

The junior accountant does not work in the accounting department. She is employed in the office of student personnel services and is paid at a level equivalent to an administrative aide. The office is divided into three high volume recordkeeping functions—admissions, veterans records, and attendance accounting and special reports. Mrs. Robinson heads up the attendance accounting functions. Staff heading the other functions are designated management or supervisory and are paid at 20 percent to 40 percent higher salary levels. In a manner similar to the accountants, Mrs. Robinson is assisted by a clerk II. An evaluation sheet is filed with the director by Mrs. Robinson regarding the performance of the clerk. Because of the volume of work and understaffing, each of the three departments appears to have carte blanche authority to authorize overtime for clericals and to grant routine absences in the absence of the coordinator. The coordinator of student personnel services gave rather confusing testimony regarding the frequency and nature of supervision give by Mrs, Robinson to the attendance clerk.

25. Joint Exhibit #12.

Regarding the percentage of Mrs. Robinson's time spent in supervising, on one occasion he stated "really shooting off the top about 40 percent of the time. They work that closely that you would have to be at least 40 . . . .[26]

On another occasion the testimony related:

> [Hearing officer] Q. Can you estimate what percentage of Mrs. Robinson's time she would spend in assigning work or evaluating the work of Mrs. Cravens?
>
> A. Right now, it's very little, . . . they work so closely. I'm sure it's very much a self-evaluation.[27]

The analogy of a skilled worker working in conjunction with a parapro-fessional must be applied to the junior accountant as well. Assignment of the duties of "typing, checking residency cards, . . . typing and filling out reports"[28] performed by the clerk are in a broad sense routine. The actual direction and special instructions given by the junior accountant are on an exception basis.

While it is troublesome that the other two section heads designated management and supervisory employees by the District appear to have responsibilities similar to Mrs. Robinson, no testimony was offered relating to their duties. It was mentioned that the management employee would be in charge of the entire office in the coordinator's absence.

No evidence indicates that the junior clerk is a confidential employee. The testimony taken as a whole does not require her exclusion from the unit as a supervisor.

BUYERS

Each of the buyers casting ballots were challenged as being supervisory or confidential employees.[29] They are Henry Little, Jacob Hovland and James Irwin.

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26. Transcript volume II, p. 148.

27. Transcript volume II, p. 147, lines 22-23.

28. Transcript volume II, p. 143, lines 8-10.

29. At the hearing SEIU sought to exclude buyers solely based upon a "supervisory" claim. The SEIU brief discusses exclusion based solely upon an alleged "confidential" status. This decision will address both grounds.

Buyers procure equipment and goods from private vendors on behalf of the District. The purchasing unit consists of 11 employees: the manager, three buyers, and seven clericals. While the District job description for buyer states they might be called upon to interview, evaluate and "supervise" clerical employees, in practice they do not. The clericals perform independent jobs related to purchasing, and are not assigned to individual buyers. They report directly to the clerical supervisor, the secretary to the purchasing manager. Any illness or time off is reported to the clerical supervisor.

None of the buyers have, in practice authority to hire, transfer, layoff, promote or direct the work of other employees or effectively recommend such action. The buyers are not supervisory employees. The director of business services testified that buyers have never been requested to provide cost data to the district negotiator. The buyers could not be excluded as confidential employees based upon hypothetical access to information used in negotiations.

III. ELIGIBLE VOTER

The ballot of Mary Davis was challenged based upon a question as to her eligibility as a voter. The parties stipulated that Ms. Davis was employed by the District as an intermediate clerk. She was granted a long-term leave of absence effective July 18, 1975 to extend until July 6, 1976. At the end of the leave of absence she notified the District of her request for reinstatement. A position was offered as an intermediate clerk in the purchasing department and Mrs. Davis rejected the reinstatement thereby waiving her right to bump a junior employee. Ms. Davis was finally reinstated on November 1, 1976.

In order to be eligible to vote, an employee, including those who did not work because they were ill, on vacation, leave of absence, sabbatical or temporarily laid off or in the military service, must be employed on eligibility cutoff

date and be employed on the date of election.[29] In the present case the eligibility cutoff date was October 31, 1976 and the election date was December 1, 1976.

The contention proposed by SEIU is that Mary Davis had not requested an extension of her leave of absence beyond August 6, 1976 as was required by District policies. Further that by her rejection of a prior position she waived her right to bump a junior employee and therefore had no status with the District on the voter eligibility cutoff date.

Ms. Davis was a permanent employee who requested a leave of absence pursuant to District policy based upon health reasons. The leave was granted by the director of personnel services and she was extended seniority credit until July 18, 1976. District policy gave the employer the option of placing an individual on an authorized leave of absence back into their identical former position or the right to bump the least senior position person in their former job classification. Prior to the conclusion of her leave of absence, Ms. Davis requested reinstatement but at the suggestion of the District that new positions were being created which would not entail bumping another employee, did not exercise her bumping rights at that time. Through discussions with the director of personnel services Ms. Davis' leave of absence was informally extended until a mutually satisfactory position could be found for her within the District.

While District policy required a written extension of a leave of absence, Ms. Davis was entitled to rely upon the representations of the administrator authorized to grant such extensions. It was clearly represented that her employment status remained in good standing. The representation was confirmed by the District's continuing to allow seniority credit during the period of July 18 until November 1 when Ms. Davis was actually re-employed. The fact that Ms. Davis was offered a position in the purchasing department and rejected the position during the interim period does not overturn all other evidence that in the minds of the

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29. EERB consent election agreement form.

parties she was on an extended authorized leave of absence. Mary Davis was an employee with the District on a leave of absence on the voter eligibility date and was an employee actually working on the election date. She is an eligible voter.

PROPOSED DECISION

It is the proposed decision that:

1. The job classifications of administrative aides, systems analyst programmers, accountants, junior accountants, and buyers are not eligible for self-determination as a unit of "professional" employees.

2. The office-technical unit shall be amended to include administrative aides, systems analyst programmers, accountants, junior accountants, and buyers.

3. The following employees are not either supervisory or confidential within the meaning of Government Code section 3540.l(c) and section 3540.l(m): Administrative aides, systems analyst programmers, accountants, junior accountants, and buyers.

4. Challenged voter Mary Davis was an employee on leave of absence on the eligibility cutoff date and is an eligible voter.

5. The following employees casting challenged ballots are employees within the unit eligible to vote and their ballots shall be counted:
Lewis Acord, Charles Alexander, Elizabeth Thunnell, Jacqueline Wilson, Seodello Martinez, Leroy Culver, Ruby Liddle, William Mayne, Ruthy Ofina, Marylou Sundstrom, Roland Villarba, Helen Robinson, Jake Hovland, Henry Little, Robert Irwin, and Mary Davis.

The regional director is requested to open the following challenged ballots stipulated to be counted by the parties:

Mary L. Richardson, Dorothy Smith, Enrique A. Rivera, Britta Lien, Roberta Metcalfe, Gabie Jack.

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 Rules and Regulations. If no party files timely exceptions, this proposed decision will become a final order of the Board on April 29, 1977 and a notice of decision will issue from the Board. At that time the regional director is further instructed to open each of the challenged ballots determined to be valid herein, to file a revised tally of ballots consistent with this decision, and to certify an exclusive representative of the employees in the office-technical unit or to conduct a runoff election as appropriate.

Dated: April 19, 1977.

Terry Filliman
Hearing Officer

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
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September 16, 1977

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RE: San Diego Community College District, LA-R-16, 17, 173, EERB Decision No. 28

Enclosed is a copy of the Order adopted by the Educational Employment Relations Board concerning the Service Employees International Union, Local 102, AFL-CIO's exception to the hearing officer's proposed decision dated April 15, 1977.

Sincerely,

CHARLES L. COLE
Executive Director

Enclosure

CLC:dd

cc: Cecil J. Hannan
Director-Administrative Services
& Chief Negotiator
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