

STATE OF CALIFORNIA  
DECISION OF THE EDUCATIONAL  
EMPLOYMENT RELATIONS BOARD

PARAMOUNT UNIFIED SCHOOL DISTRICT, Employer	)	
	)	
and	)	Case No. LA-R-75
	)	
TEACHERS ASSOCIATION OF PARAMOUNT, Employee Organization	)	EERB Decision No. 33
	)	
	)	October 7, 1977
	)	

Appearances: Joseph E. Herman and Barry R. Smith, Attorneys (Seyfarth, Shaw Fairweather and Geraldson), for Paramount Unified School District; Paul Crost, Attorney (Reich, Adell and Crost), for Teachers Association of Paramount.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION AND ORDER

Paramount Unified School District takes exception to the following aspects of the attached hearing officer's decision: the hearing officer's proposed decision that counselors are not management employees or supervisory employees within the meaning of Government Code Sections 3540.1(g) and 3540.1(m), respectively; that counselors should be included in a unit with other certificated employees; that the coordinator of music is not a management or a supervisory employee within the meaning of the Educational Employment Relations Act; and that part-time children's center teachers should be included in a unit with other certificated employees. Other issues were decided by the hearing officer, but no party filed exceptions in respect to them. The Board has considered the record and the attached proposed decision in light of the exceptions.

On the matters excepted to, the hearing officer's decision is substantially in accord with precedents of the Board. Accordingly, the proposed order of the hearing officer is adopted as the order of the Educational Employment Relations Board. See Oakland Unified School District,<sup>1</sup> on the issue of the management and supervisory status of counselors and the inclusion of counselors in a unit with other certificated employees; Lompoc Unified School District<sup>2</sup> on the management and supervisory status of the coordinator of music; and Belmont Elementary School District<sup>3</sup> on the issue of the inclusion of part-time teachers in a unit with other certificated employees.

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Reginald Alleyne, Chairman

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

I note that during five years in that position, the coordinator of music evaluated in some unspecified fashion one traveling elementary teacher. One isolated instance during a five-year span of the exercise of one of the secondary indicia of supervisory status is not sufficient to establish that the coordinator

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<sup>1</sup>EERB Decision No. 15, March 28, 1977.

<sup>2</sup>EERB Decision No. 13, March 17, 1977.

<sup>3</sup>EERB Decision No. 7, December 30, 1976.

of music in fact possesses the requisite authority to be excluded from the negotiating unit as a supervisor.

Finally, I find no merit in the District's contention that part-time children's center teachers should be excluded from a unit which, by agreement of the parties, includes full-time children's center teachers. Cf. Oakland Unified School District, EERB Decision No. 15, March 28, 1977.

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Jeyilou H. Cossack, Member

Raymond J. Gonzales, dissenting:

I respectfully dissent from the majority's decision to sustain the hearing officer in this case on the question of whether the counselors should be included in a unit with other certificated employees. I would refer the reader to my dissent in Grossmont Union High School District<sup>1</sup> and although the facts of this case are not totally identical, I feel the community of interest standard that I required in my Grossmont dissent would apply in this case. Therefore, I feel there is sufficient evidence in the present case to allow for "an" appropriate bargaining unit of counselors.

I concur with the decision on all other aspects of this case.

By: Raymond J. Gonzales

Dated: October 7, 1977

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<sup>1</sup>EERB Decision No. 11, March 9, 1977.



STATE OF CALIFORNIA

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

In the Matter of:	)	
	)	
PARAMOUNT UNIFIED SCHOOL DISTRICT,	)	Case No. LA-R-75
	)	
Employer,	)	
	)	<u>PROPOSED DECISION</u>
-and-	)	
	)	(6-14-77)
TEACHERS ASSOCIATION OF PARAMOUNT,	)	
	)	
Employee Organization.	)	
	)	
	)	

Appearances: Joseph E. Herman and Barry R. Smith, Attorneys (Seyfarth, Shaw, Fairweather and Geraldson) for Paramount Unified School District; Paul Crost, Attorney (Reich, Adell, and Crost) for Teachers Association of Paramount.

Before: Michael G. Coder, Hearing Officer

OPINION

PROCEDURAL HISTORY

On April 1, 1976, the Teachers Association of Paramount, CTA/NEA (hereinafter "TAP") filed a request for recognition as the exclusive representative for a unit of certificated employees with the Paramount Unified School District (hereinafter the "District").<sup>1/</sup>

<sup>1/</sup> The proposed unit included all certificated employees excluding the following positions: superintendent; assistant superintendent, business; assistant superintendent, instruction senior director of personnel; senior director of special projects; director of pupil services; principal, high school;

On May 4, 1976, the District notified the Educational Employment Relations Board that it doubted the appropriateness of the unit described by TAP. A formal unit determination hearing was held November 22 and December 15, 1976.

### ISSUES

1. Whether counselors are management employees.
2. Whether a separate unit for counselors is appropriate.
3. Whether the coordinator of music is a management or supervisory employee.
4. Whether the Early Childhood Education team leaders are management or supervisory employees.
5. Whether part-time employees should be included in the unit.

### DISCUSSION

#### THE DISTRICT

The Paramount Unified School District has an average daily attendance of approximately 10,700 students. The District employs approximately 462 certificated personnel.

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principal, intermediate school; principal/director, adult education; ESAA project coordinator; principal, elementary school; assistant principal, high school; assistant principal, intermediate school; coordinator (if paid on Admin. Sal. Sched. during 1975-76); Title VII project leader; student activity director (if paid on Admin. Sal. Sched. during 1975-76); and psychologist. It was stipulated that these positions were either management or supervisory positions and therefore not properly within the unit for which TAP had petitioned.

## COUNSELORS

There are twenty-one counselors, of whom half are funded from general district funds and the other half of whom are categorically funded. The counselors are permanently assigned to specific schools throughout the District.

The District contends that the counselors are management employees, or, in the alternative, that the counselors are not appropriately within the unit for which TAP petitioned in that the counselors do not share a community of interest.

### Management Status

Government Code Section 3540.1(g) defines a management employee as "any employee in a position having significant responsibilities for formulating district policies or administering district programs."

In interpreting Section 3540.1(g), the Board has concluded that despite its apparent disjunctive language, the appropriate interpretation of the Section requires that a person must possess both the "significant responsibilities" in order to be excluded as a management employee.<sup>2/</sup>

Management personnel in public sector employment governed by the Meyers-Miliias-Brown Act<sup>3/</sup> are entitled to be represented by an exclusive representative. This is not the case with management personnel employed in public schools governed by the Educational Employment Relations Act (hereinafter "EERA").<sup>4/</sup> For example, management personnel are exempted from those persons defined as as "employees."

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<sup>2/</sup> Los Rios Community College District, EERB Decision No. 18, June 9, 1977; Lompoc Unified School District, EERB Decision No. 13, March 17, 1977.

<sup>3/</sup> Government Code Section 3500 et seq; future references, unless otherwise designated, shall be to the Government Code.

<sup>4/</sup> Section 3540, et seq.

"Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.<sup>5/</sup>

The EERA further provides:

A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.<sup>6/</sup>

The Board, in Lompoc, cited New York University<sup>7/</sup> with approval as standing for the proposition that the facts of a particular case must clearly establish that the employee is clearly allied with management. There is an implied presumption against denying valuable negotiating rights to a person by designating that person "management."

It is with the above rules in mind that the facts of the instant case are presented.

In support of its position, the District primarily cites a recommendation from the counselors for certain changes in their activities and a redefinition of their goals and objectives. Partially as a result of this study, the number of days a counselor was required to serve was increased by twelve days, and counselors were

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<sup>5/</sup> Section 3540.1(j).

<sup>6/</sup> Section 3543.3.

<sup>7/</sup> 221 NLRB 1148, 91 LRRM 1165 (1975).

to serve an "eight-hour day." TAP contends that the formulation and administration of a counseling program by the counselors themselves is not a significant responsibility at the District level.

The District placed heavy reliance on the self-evaluation and counseling proposals which culminated in the publication of GUIDANCE HELPS. Through the assistance of the director of pupil services, Dr. Ronald Lackey, a "needs assessment" was completed which formed the basis for the evaluation of the counseling program. After numerous committee and subcommittee meetings and discussions with management, the document GUIDANCE HELPS was prepared and adopted as district policy by the Board of Education after some minor modifications.

The scope and significance of modifications in the counseling program as reflected by GUIDANCE HELPS are interpreted differently by the District and by TAP.

This voluminous document contained a comprehensive description of the goals, objectives and methods of providing counseling services to students, and it proposed an electronic data processing system whereby the site administrators could maintain ongoing audit and review of their activities. The goals, objectives and methods of providing counseling services are mere refinements and elaborations of the traditional counseling roles as previously promulgated by the District's management and contained within past job descriptions and school board regulations. The concept of recording and evaluation by computer, which was adopted by the counselors, is found to have been initiated by Dr. Ronald Lackey, the Director of Pupil Services, a management position. Pursuant to the meetings of the counselors, a

majority approved of the concept of counselors working an "eight-hour day." There was, however, a significant minority which took exception to the concept of the "eight-hour day." This time was felt necessary to enable the counselors to complete their objectives as well as to provide a degree of identification by and with the community which generally worked an "eight-hour day." Precisely what was meant by an "eight-hour day" was apparently subject to individual interpretation. The general interpretation is that the concept of the "eight-hour day" required eight duty hours on the site. For some counselors the concept was merely an affirmation of their past and current practices; for others it required some additional duty time to be spent on the site.

The counselors also felt it necessary to increase the length of their school year by twelve additional days to accomplish the goals which they had set for themselves. As a result of the additional duties and responsibilities which the counselors proposed to assume, their compensation is now determined on a separate salary schedule. Although the counselors originally expressed a desire to remain on the teachers' salary schedule, the District's management insisted a new salary schedule was required. This salary schedule was described as being akin to an administrative salary schedule. Counselors were found to be generally included on the top four steps of the teachers' salary schedule. These four steps were used as the basis for the new counselor salary schedule. The rate of pay for teachers was multiplied by what can best be described as a "responsibility factor" of 1.015 (indicating an increase of 1½%) and further adjusted by allowance for the twelve additional days of

service required of them which was not required of teachers.

This different salary schedule is not found to significantly affect the status of the counselors as pertains to the contention that they are management employees. Despite the alteration of the teachers' salary schedule, the counselors' remuneration was determined by the salary paid to the teachers. Steps on the teachers' salary schedule which did not generally relate to those persons employed as counselors were eliminated and the counselor salary schedule was compacted. The salaries of the counselors were increased by a sum equal to one and one-half percent above the top teacher's salary. Since the teachers and counselors had previously worked a 180-day year, additional prorated compensation was added for the twelve additional days of service now required of the counselors.

It cannot be found that the counselors have significant responsibility for adopting District policies based upon the publication of their program guidelines, GUIDANCE HELPS. The alterations which were made in the counselors' program, chiefly the accounting procedures and increase in work hours, are found to have been made under the direction and control of Dr. Ronald Lackey and others of the District's management team.

Even if it were found that the counselors as a group had a significant effect on altering their collective counseling program, the conclusion that these persons are not management employees would not be altered. As counsel for TAP correctly points out in argument, the EERA states that one of the purposes of the law is "to afford certificated employees a voice in the formulation of educational policy."<sup>8/</sup>

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<sup>8/</sup>Section 3540.

Recommendations as to improvement of the program in which a teacher or counselor is involved are within the traditional professional responsibilities of the certificated staff. <sup>9/</sup>

It is found that the only significant change which resulted from the counselors' self-evaluation was the previously mentioned "eight-hour day" and the increase in the counselors' school year by twelve days. These changes were the result of a secret ballot carried by a majority vote, over the opposition of a very vocal and significant minority. Are these counselors who voted against such a change, and who question its legality, to be considered as having significant independent authority to propose and implement district policy? If this one factor could be considered as an indicia of management responsibility, it cannot now be determined which counselors are to be considered management for having voted favorably on the proposal. The counselors, as a result of their self-evaluation, formulation and implementation of GUIDANCE HELPS, cannot fairly be said to regularly exercise any of the duties and responsibilities ascribed to management employees. The group's evaluation of the district program, and improvement of the counseling program at each site is not sufficiently different from the professional, certificated staff members.

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<sup>9/</sup> See California Federation of Teachers vs. Oxnard Elementary School District, 272 Cal. App. 2d 514 (1969) and San Juan Teachers Association vs. San Juan Unified School District, 44 Cal. App. 3d 232 (1974).

The yearly individual objectives that the counselors write must be submitted to the principal for his approval. Similarly, the responsibility for monitoring the guidance program rests with the principal. Finally, to leave the school site a counselor is required to clear his actions with the principal.

For each and all of the above cited reasons, it is concluded that the counselors are not management employees.

#### Appropriate Unit

The District urges that if the counselors are not found to be management, they are to be excluded from the proposed unit because their inclusion renders that unit inappropriate. The standard for appropriate bargaining units is the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.<sup>10/</sup> Urged as distinguishing characteristics are: an "eight-hour work day;" longer work year; different salary schedule; a private office; regular use of a secretary; the fact that half of the counselors are not permanent certificated employees; and that they have not necessarily served as classroom teachers. As a result of these alleged

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<sup>10/</sup> Section 3534(a).

differences, the District contends that bargaining conflicts will inevitably arise, thereby interfering with the efficient operation of the District. TAP cites the following as evidence of the counselors' community of interest with teachers: both work primarily with students; interaction with the teaching personnel; utilization of counselors as emergency substitute teachers; previously two counselors were assigned minor teaching duties for one and three years respectively; the direct relationship between the two salary schedules; past participation in the Certificated Employees Council as part of TAP; many counselors are tenured teachers in the district; and similar fringe benefits and working conditions.

In Los Angeles Unified School District<sup>11/</sup> and Grossmont Union High School District,<sup>12/</sup> the Board found that counselors as well as other pupil services employees did not have a sufficiently different community of interest to be excluded from the certificated employee unit. The facts in this case do not compel a contrary result.

In both decisions, the Board recognized that certain differences in working conditions between counselors and teachers exist:

"We are mindful that there are some minor differences between teachers and the ... disputed classifications (counselors), such as the length of their work day and work year. However, we do not view these differences as sufficient to establish a separate community of interest." <sup>13/</sup>

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<sup>11/</sup> EERB Decision No. 5, November 24, 1976.

<sup>12/</sup> EERB Decision No. 11, March 9, 1977.

<sup>13/</sup> Ibid at page 7.

In Grossmont, the counselors worked one hour longer than the normal teaching assignment and served six more days per year. In Los Angeles, counselors shared office facilities and a secretary while teachers prepared assignments in the classroom or at home.

It is found here as in the above mentioned decisions that both groups of employees are "credentialed" requiring advanced educational training although the emphasis may differ slightly: both receive the same fringe benefits including sick leave, vacation, holidays, retirement and insurance. The counselors are required to participate in certificated faculty and staff meetings. All certificated employees are evaluated according to Stull Act requirements in the Education Code.

Most counselors are assigned to a school site and fall within the general supervision of the site administrator as do teachers. Approval of a counselor's yearly objectives and monitoring of the guidance program is a responsibility of the principal, who also evaluates teachers' lesson plans. Finally counselors have daily interaction with teachers in the course of performing their guidance and counseling functions for students.

The District argues that the establishment of a separate salary schedule for counselors has created a distinction between their employment interests and those of teachers. It is true that in both Los Angeles and Grossmont, while counselors received a pay differential above that of classroom teachers, the base salary of all certificated employees was determined from a single salary schedule. Here the separate schedule was unilaterally established by the District. It was the counselors' original desire to remain on the teachers' salary schedule. The management refused, insisting on a new schedule if counselors were to receive extra remuneration for

their extra duties and hours. While the salary base difference has been considered in determining community of interest, taken alone it is not sufficient to justify a separate unit in light of the background facts. Moreover, the top four steps of both schedules are identical prior to the addition of the counselor's differential. In light of its obligation to fairly represent all members of the unit an exclusive representative might well negotiate a single schedule again.

Finally, the District cites the fact that many counselors were categorically funded or were permanent employees as a distinguishing factor favoring their inclusion within a separate bargaining unit. Again, it is recognized that, in the prior cases, counselors were tenured, certificated employees, most of whom had seniority in classroom service with a right to return to teaching.

The District's position here, however, was not contrasted with facts as to whether or not other certificated personnel were permanent employees. It is possible, if not likely, that some classroom teachers within the undisputed unit are not permanent employees also. The isolated fact that many counselors are not permanent employees does not weigh either for or against a community of interest in the absence of a showing of what is proved by such evidence.

The factors raised by the District to show dissimilar interests between counselors and teachers have been weighed against the numerous similarities as found in earlier Board decisions and are not sufficiently strong as to distinguish this case. Accordingly, counselors shall be included within the overall certificated employee unit.

## COORDINATOR OF MUSIC

There is one person who serves as the Coordinator of Music, Mr. James DeBolske. The District contends that the coordinator of music is a management or supervisory employee, both of which designations are opposed by TAP.

He is a regular teacher for three periods, and serves as coordinator for two periods. For the extra duties involved in coordination, he receives \$341.10 additional yearly compensation over his regular teacher's salary. All other benefits are the same as regular teachers. He is the general curriculum leader for the music department, as well as consultant and resource person in this area. Although more time was spent at these activities than is true of most department chairmen, the difference appears to be merely of duration and not of degree. As part of his coordinating duties, DeBolske schedules musical performances for community groups. This duty is found to be clerical in nature, and does not involve the use of independent judgment.

DeBolske administers an \$8,000 budget. Although free to spend within this budget, the exigencies of routine repair of equipment and purchase of musical supplies leave little money over which he can exercise independent judgment. This factor is a slight indication of management status.

In the five years he has served as music coordinator, DeBolske has evaluated only one other music teacher. He himself is evaluated by the high school principal. He was part of an interviewing panel with two other music teachers. As a result the top three interviewees were rated and the recommendation forwarded to the Personnel Office. Whether any person so recommended was hired is not disclosed by the record. This factor is insufficient to establish that DeBolske has independent authority to effectively recommend the hiring of personnel. The evaluation of the one other teacher cannot be said to be a regular activity so as to give rise to supervisory status.

The position for which DeBolske and his colleagues interviewed applicants was created on a suggestion by DeBolske. This recommendation of another music teacher position had been made by him for several years. That the budget was able to support the added position for the first time this last school year does not alter the fact that DeBolske's recommendations were not effective ones, better characterized as mere suggestions.

The duties and responsibilities of the coordinator of music are indistinguishable from those assigned to high school department heads in New Haven Unified School District.<sup>14/</sup>

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<sup>14/</sup> EERB Decision No. 14, March 22, 1977.

In that case, upon finding the department heads to be neither supervisory nor management, the Board stated:

..."Department heads are selected on the basis of expertise and experience in departmental subject matter. Making informal classroom observations, chairing meetings, participating in the hiring process and assisting teachers with teaching problems are all duties... which result from the utilization of their special skills in subject matter." (p. 7.)

In response to a claim that a department head administered a department budget similar to DeBolske's authority over the music budget, the Board found:

The administrative activities of department heads regarding the balancing of the budget, inventory of supplies and equipment, ...are not supervisory activities, and moreover are merely routine in nature and require little, if any, exercise of independent judgment. (p. 7.)

As in New Haven, Mr. DeBolske is efficient and proficient in his discipline, makes no formal evaluation of other music teachers, administers a small budget within prior practices of the District, is involved to a limited degree with hiring personnel within his department, and acts as a communication liaison among department members.

The above facts indicate routine duties and responsibilities which require a minimal exercise of independent judgment. Therefore, it is found that the coordinator of music is neither a management nor a supervisory employee.

#### ECE TEAM LEADERS

The District contends that the team leaders of the Early Childhood Education Program (ECE Program) are either management or supervisory employees. Either designation is disputed by TAP.

Based upon the facts stated below, the Early Childhood Education team leaders are found to be supervisory employees within the meaning of Section 3540.1(m). Following the procedure established by the Board, having so concluded, it need not be further determined whether the team

leaders would also be management employees.<sup>15/</sup>

The District participates in the state-funded ECE Program, which is designed to improve the delivery of elementary education. In order to become eligible for funds, the school must submit a comprehensive plan, including goals and methods of education in mandated major areas of learning. Schools participating in the program must also submit to the state a review of their progress under the plan at the end of each year, and a new and updated plan must be submitted for the school each year to continue to receive state funds.

At each participating school a full-time staff member called the ECE team leader is employed to manage and monitor this vital program. The responsibilities of the team leader include not only the yearly drafting of a plan of goals and methods and the required monitor and review activity, but also require that the "leader" give assistance to the teaching staff on appropriate methods and materials and constantly evaluate teacher performance in working toward the established goals.

Tom Bonyngge, ECE team leader at Roosevelt School, is described as having a team relationship with his principal in the preparation and enforcement of the plan. In addition to his responsibilities for drafting the school plan and coordinating the review activity, the bulk of his time during the school year is invested in work directly related to administration of the school program.

Much of this work is in the capacity of a curriculum leader. He assists the staff with changes in curriculum and instructs them in the use of new methods and materials designed to conform to the school plan. He

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<sup>15/</sup> See Los Rios supra at p. 25; Lompoc supra at p. 24.

maintains various charts and records which monitor the teachers' progress toward the goals set by the plan. He further reviews the teachers' actual classroom work to ensure that they are performing according to the ECE Program's curriculum demands. Bonyngge has some authority to take action to ensure that a teacher conforms to his demands to modify teaching methods. The ultimate authority to insist on compliance remains with the principal. Infrequently he has had to refer problems with the staff to the principal because a teacher had refused to comply with his requests.

The responsibilities of ECE team leader at Hollydale School, Marge Lorenze, are nearly identical to Bonyngge's. She, too, has the ultimate responsibility for compiling and monitoring the ECE Program at her school. She also developed and coordinates a unique physical education curriculum which is part of the school plan. Throughout the year, her time is devoted to overseeing teachers' progress and performance in the classroom and to suggesting corrections to staff members who are not conforming to the requirements of the school plan.

The issue of whether the ECE team leaders are supervisors is resolved by reference to Government Code Section 3540.1(m) which defines a supervisory employee as follows:

"Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, 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.

This section is written in the disjunctive; therefore, possession of any one function or duty is sufficient to indicate an employee is a supervisor.<sup>16/</sup>

Many of the functions of team leaders described in the hearing relating to planning and monitoring the program would be more appropriately addressed to a "management" question which, as discussed earlier, is not necessary for resolution if they are found to be supervisors and excluded from the certificated unit on that basis.

The duties and responsibilities of the ECE team leaders are generally similar to those of the subject coordinators and in Lompoc and the department heads in New Haven, both of whom were determined not to be supervisors. In each case, while the employee worked with other certificated employees giving guidance and assistance about their performance in a specific subject area, he did not effectively recommend hiring, promotions, discipline, assignments, or evaluation of other teachers, nor did they direct the work of other teachers. The same finding is made with regard to the ECE team leaders here.

On the other hand, like the migrant program coordinator in Lompoc, who was determined to be supervisory, the team leaders have the authority to effectively recommend the hiring and evaluation of certain classified and other non-unit employees. The migrant coordinators hired aides and summer school teachers who assisted with the program. In determining their supervisory status, the Board ignored the fact that the employees supervised would not have been in the same unit as the supervisor. In Los Rios, the Board

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<sup>16/</sup> See Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976.

clarified that supervision "of other employees" is not so limited.<sup>17/</sup>

Here, the team leaders recommend evaluations and hiring of aides and assign them. They also direct other non-unit employees.

In hiring aides, Lorenze has established the policy of involving the teacher to whom the aide will be assigned and, if possible, a parent coordinator. If two persons were found to be equally qualified for the position, the final selection would be made by the teacher to whom the aide would be assigned. The decision of Lorenze to partially delegate the selection in some cases does not obviate the fact that the hiring is her independent responsibility.

Despite conflicting testimony, it is found that commencing with the 1976-77 school year, Bonyngé has effectively recommended the hiring of aides.

Last year, both Bonyngé and Lorenze played a major role in the evaluation of aides.

Moreover, Lorenze explained that she regularly has explained the proper use of the aide evaluation form to the teachers so that a uniform system of evaluation would be used within the school. She also has actually made specific recommendations to classroom teachers as to how a particular aide should be evaluated.

Bonyngé has the responsibility to supervise the library clerk at Roosevelt School; Lorenze directly supervises a parent coordinator employed to administer the parent participation portion of her school plan.

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<sup>17/</sup>Supra, p. 26, fn 4. As supervisors, the team leaders must be excluded from the certificated unit.

PART-TIME EMPLOYEES

Two persons are currently employed in the Children's Center as part-time employees. They hold a Child Care Center Credential as opposed to a regular teaching credential. These two employees are probationary teachers, eligible for tenure the same as full-time Children's Center teachers. These employees work three and a half hours per day, whereas full-time Children's Center teachers work an eight-hour day. Their pay is prorated by the hours worked. These teachers receive vacation pay and sick leave, but do not receive any insurance benefits provided to full-time employees by the District.

The full-time Children's Center teachers are conceded to be appropriately within the unit for which TAP petitioned.

Although the part-time teachers work less than half-time, and receive no insurance benefits, their community of interest with other employees, notably Children's Center teachers, is substantially similar to the community of interest found in Belmont Elementary School District.<sup>18/</sup>

As in Belmont, the part-time teachers are to be included within the unit.

PROPOSED DECISION

It is the proposed decision that:

1. The counselors are not management employees pursuant to Section 3540.1(g). Nor are they supervisory employees pursuant to Section 3540.1(m). The counselors shall be appropriately included with the certificated employee unit.

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<sup>18/</sup> EERB Decision No. 7, December 30, 1976.

2. The ECE team leaders are supervisory employees pursuant to Section 3540.1(m) and shall be excluded from the certificated employee unit.

3. The music coordinator is not a management employee or a supervisory employee and shall be included with the certificated employee unit.

4. The part-time Children's Center teachers share a community of interest with other certificated employees and shall be included within that unit.

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

Certificated Employee Unit: Consisting of all regular full-time teachers, all full-time and part-time Children's Center teachers, all counselors, and the music coordinator, but excluding all management, supervisory, and confidential employees. The ECE team leaders are excluded as supervisory employees. <sup>19/</sup>

The parties have seven calendar days from receipt of this proposed decision in which to file exceptions in accordance with Section 33380 of the Board's Rules and Regulations. If no party files timely exceptions, this proposed decision will be a final order on June 27, 1977, and a Notice of Decision will issue from the Board.

Within ten 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

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<sup>19</sup> The parties, by mutual agreement, refrained from hearing any issues as to the inclusion or exclusion of regular part-time teachers.

qualifies for the ballot and the employer does not grant voluntary recognition.

Dated: June 14, 1977

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Michael G. Coder  
Hearing Officer